



trial 37c.

TRIAL

OF

MRS. REBECCA PEAKE,

INDICTED FOR THE

MURDER OF EPHRAIM PEAKE,

TRIED AT

ORANGE COUNTY COURT, DEC. TERM, 1835.

EMBRACING THE EVIDENCE, ARGUMENTS OF COUNSEL,
CHARGE, AND SENTENCE.

MONTPELIER:
E. P. WALTON & SON, PUBLISHERS.

1836.

TRIAL OF MRS. REBECCA PEAKE.

INDICTED FOR THE MURDER OF EPHRAIM PEAKE.

STATE OF VERMONT, { STATE vs. REBECCA PEAKE.
ORANGE COUNTY, Dec. 23, 1835. } CA PEAKE.

PRESENT—Hon. CHARLES K. WILLIAMS, Chief Justice.

Hon. JACOB COLLAMER, 3d Assis't Justice.

Hon. LYMAN FITCH, { County Judges.

Hon. JACOB K. PARISH, }

EDMUND WESTON, State's Attorney, and WM. HEBARD, Counsel for the State.

WM. UPHAM and LUCIUS B. PECK, Counsel for the Prisoner.

At ten o'clock A. M. the prisoner was arraigned at the bar and plead not guilty—whereupon the following Jurors were called, to wit :

1 Alba Simons,	Wm. Putnam,
2 Wilder Dearborn,	7 Lewis Jenkins,
Joseph Hutchins,	8 N. W. Ayer,
Lazarus Risord,	9 Horace Ware,
3 Stephen Chapman,	10 Wm. Morse,
4 Wm. M. Huntington,	Richard Wells,
5 John Judd,	11 Hale Grow,
6 Joseph Barrett,	12 Josiah Robbins.

Upon the first juror being called, the State's Attorney asked the following question,—Have you any conscientious scruples to render a verdict of guilty, where the punishment is death, provided the evidence is sufficient to satisfy your mind of the guilt of the accused? This ques-

tion was objected to by the counsel for the prisoner, and the court overruled the objection; the question was then put to each juror, and each answered that he had no conscientious scruples upon the subject—when the several jurors above designated by the figures 1, 2, &c. were empannelled and duly sworn, the other named gentlemen having been challenged.

The indictment having been read, Mr. WESTON opened the case, under the direction of the court, as follows:

Gentlemen of the Jury :—I shall prove to you by witnesses on the part of the Government, that between twenty and thirty years ago the prisoner at the bar, was married to her present husband, Jonathan Peake; that Jonathan Peake had then recently buried his first wife, by whom he had eight or nine children; and that subsequently he had two children by the prisoner, a daughter, now married to a man by the name of Bannister, and a son, now about eighteen years of age; that the children of Mr. Peake by his first wife, for some years past, have resided away from home; that Ephraim, the son of the prisoner's husband, and whom the prisoner is charged with having poisoned, had by his industry and frugality, acquired property, in money and notes, to the amount of \$1,500; that about one year ago, his father, being involved in debt, and his farm being mortgaged, proposed, by the advice of his neighbors, to have the deceased come home, clear the farm from encumbrances, pay his father's debts, take a deed of the property, and become obligated to maintain his father and the prisoner during their natural lives; and that this arrangement was effected. It will appear in evidence before you, gentlemen of the Jury, that the prisoner was greatly displeased with this arrangement; that she made many threatening observations to the neighbors; that she said, that if the deceased came home to live, they would not live together long; that the house would be too hot for him; that she and her children had as good right to the property as Ephraim, and other expressions of like import. It will be proved to

you, that the family, during the months of June and July and till the 12th of August, consisted of the prisoner, Mr. Peake her husband, Ephraim the deceased, Fanny the sister of the deceased, and the son of the prisoner; that about the first of July, the prisoner purchased at Royalton, an ounce of arsenic, and brought it home; that she told the clerk of whom she obtained the arsenic, that a Doct. Tower of Roxbury sent for it; that on Wednesday the 12th of August, the son of the prisoner was absent from home; that on that day they had hash for dinner; that the prisoner did not eat of the hash, and the rest of the family did; that after eating of the hash, the deceased, his father and Fanny were immediately taken sick and vomited; that they continued sick, but gradually recovering, till Sunday the 16th of August, when Ephraim and Fanny were taken worse; and that on Thursday, the 20th of August, Ephraim died. It will be in evidence before you, gentlemen, from the testimony of the physicians who attended the deceased during his sickness, that his symptoms were such as usually follow the taking of arsenic; and that on the *post mortem* examination made by the Physicians, the appearances in and about the stomach were such as would be expected where death is occasioned by arsenic. It will also be in evidence, that on Sunday afternoon, the 20th of August, when the family suspected they had taken arsenic, and talked of it in the presence of the prisoner, she immediately went into her chamber and feigned sickness, and did not leave the chamber till after Ephraim's death; that the prisoner acknowledged to various persons, who will be called to testify on the part of the government, that she bought the arsenic at Royalton and brought it home; that on the 12th of August she sprinkled arsenic on the hash, and on the next day put arsenic in custards, of which the family ate, and that certain drinks, which were given the deceased on the 16th of August, were prepared by her in the cup in which she had kept the arsenic; and we believe, gentlemen of the Jury, that from all the testimony which

will be put into the case on the part of the Government, you will be convinced, beyond a reasonable doubt, that Ephraim Peake came to his death by the means of arsenic, knowingly administered to him by the prisoner.

EVIDENCE FOR THE PROSECUTION.

[Having been disappointed in endeavoring to obtain the testimony taken by the Court, the publishers have availed themselves of the minutes furnished by L. B. Peck, Esq., one of the counsel for the prisoner.]

Jacob R. Pember. Is a physician in Randolph, was first called August 14, 1835, to see Ephraim Peake and rest of the family; found them all quite sick, especially Ephraim, who was vomiting and was distressed. The symptoms were such as usually attend the commencement of a fever. After taking medicine, in about 24 hours, his vomiting in a great measure subsided, and in one or two days entirely; he then gradually improved for three or four days and until Sunday evening. I visited him two or three o'clock Monday morning and found him quite sick; his symptoms were similar to those he first had, but much aggravated; complained of pain and burning in his stomach and bowels; from that time he grew worse until his death, Thursday afternoon. During his sickness there was a restlessness and prostration of strength; at the commencement of his sickness his skin was very dry and hot, afterwards became moist; his tongue was unusually coated and swollen, his eyes were red, and his limbs in the last of his sickness were somewhat swollen; no paralysis, but complained of numbness in his limbs—of his skin itching, attended with an eruption; was troubled to breathe, pulse very frequent and somewhat hard—the pulse rather full at first; his mind was not impaired. These symptoms indicated a great derangement of the system. At the time was of opinion that his sickness was occasioned by something taken into the stomach, and was such as is occasioned by metallic poison; arsenic is of this character. A *post mortem* examination took place day after death: appearances indicated a high state of inflammation in the stomach and bowels—were such as would be produced by inflammation; color of stomach was a dark red, approaching gangrene; heart somewhat enlarged, & pericardium contained a fluid of several ounces, from four to eight; heart, liver and lungs appeared inflamed. Am of opinion that death was caused by something that was taken into the stomach which acted as a poison. Appearances of stomach, &c. were such as denoted a high state of inflammation which might be occasioned by poison or some other cause;

some of his symptoms could not be attributed to any thing but poison, such as palpitation of the heart and a sinking and burning at the stomach.

CROSS EXAMINATION.

Was first called on Thursday—no sweat nor purging then. All the symptoms might be produced by the sudden attack of disease, such as cholera morbus. Cold sweat is produced by poison at some time before death. Prisoner was attending upon the sick when first called. Don't know but all the symptoms attending Ephraim when called on Monday might have been produced by something other than poison. Eyes are generally red when one is seized by sudden disease. Contents of stomach were never analyzed; there is no way of positively ascertaining whether arsenic has been taken into the stomach but by reducing it to a metallic state; should not think it could have been discovered at the *post mortem* examination; it might have been found in the coats of the stomach; when sufficient arsenic is taken to produce vomiting, it generally produces death in a short time, say twelve or twenty-four hours—might live longer; if part is ejected from the stomach and enough is left to produce death, the person dies in a short time.

Weston. If there be a partial ejection of arsenic from the stomach, how long would the patient survive? From 12 to 24 hours, and would have the symptoms of high inflammation, and there would be numbness of the limbs.

W. Carpenter. Was first called to *Ephraim Peake*, Monday inorning; was laboring under a high inflammation, pulse 100, skin hot and dry, tongue thickly coated and dry, very thirsty, pain in the bowels and stomach, eyes very red, fulness of the temporal arteries; scales on the skin—such as are produced by eruption; complained of numbness of the limbs, troubled in breathing; don't recollect of his sweating; skin rather hot. These symptoms might be produced by taking arsenic; then supposed he had taken some poison. Don't recollect that he ever saw all the same symptoms in any patient before. On *post mortem* examination found the stomach, heart, &c. inflamed—heart case contained a fluid of some 4 or 5 ounces—heart a little enlarged—coats of stomach much inflamed and gangrenous, particularly, the lower part—small intestines more inflamed than the larger. Was more confirmed in my opinion that arsenic had been taken—and the symptoms *might* have been produced by arsenic. Symptoms of *Fanny Peake* same as Ephraim, not so aggravated. Old Mr. Peake complained of numbness in his feet, &c. On Monday morning tho' recovery of Ephraim doubtful. When I saw him the 2d time, I can't say what day, he asked me what I thought of his situation? told him he was very sick, hoped he might get well, but was uncertain. He said he did not expect to recover.

CROSS EXAMINATION.

It is laid down by authors that a cold sweat and palid countenance

is immediately produced when sufficient arsenic is taken to produce gripes and sweat. No indication to sleep—very sleepless. Those symptoms might have been occasioned by sudden sickness. Never attended a *post mortem* examination where the patient died from poison. Authors say that when poison enough to occasion vomiting has been taken, death follows in from 12 to 48 hours. Discovered no ulceration in the stomach or intestines. Ulceration would be naturally expected. Should think ulceration would occur before death; it might occasion immediate death, and might not.

Fanny Peake. At and before the sickness of Ephraim, family consisted of father, mother in-law, a brother and half-brother and myself. Half-brother left home early that morning. Mother got the breakfast, I assisted some. Mother and all eat breakfast together, had hash; she went to spinning; had hash for dinner, which witness prepared; father and Ephraim were called to dinner and all set down to table; mother eat of the cake, not of the hash. Ephraim eat of the hash only, and the rest, of both. While getting dinner I was down cellar, and out at the well. In the course of the forenoon mother went to Mr. Perrin's. When I took up the hash, thought it looked white; a few minutes after dinner father said he felt sick; witness cleared off the table. Felt strangely; went up stairs and laid down, was sick at her stomach—grew sicker, and went out of doors and vomited a great deal; threw up her dinner and a greenish matter; felt relieved, and went into the house and found brother Ephraim vomiting. Witness continued vomiting, at times, during the day—father also vomited. Ephraim said he thought it was the hash that sickened them, witness thought not; mother thought it was the potatoes; witness said it could not be. Mother then said it must be the water. Witness put the hash into the swill pail, and Ephraim went out with the pail and fed the hogs. In about half an hour witness went out and found the hogs vomiting; told mother of it; she said witness ought not to have put the hash into the pail—should have thrown it away. By night all had become weak from vomiting. About sundown Ephraim enquired for mother, who had been absent. Mother said she had been to Mr. Bannister's to have George come home; that all were so sick she went after George to have him at home to go after the Doctor in case they should want him. At night witness was very thirsty—and drank some milk; didn't vomit much after that. Ephraim continued vomiting through the night; in the afternoon of the next day the Doctor arrived. On Thursday witness made some custards of which all the family partook that day, witness and those who ate the custard commenced vomiting again. Mother sat at the table, but don't recollect whether she ate of them. Sunday morning George went to Mr. Bannister's, who married witness's half sister, to have them come to father's. They came; on Sunday witness, to turn her sickness, took salt and water which distressed her very much and she

commenced vomiting again. Mother gave me the salt and water. Sunday morning sent for Mrs. Perrin, witness's sister. Ephraim did not drink of the salt and water. On Thursday noticed Ephraim's eyes looked bad—was in the room with him about two days before he died ; he was troubled with pain in his stomach and bowels. Witness was not able to set up when Ephraim died. After witness had been sick 2 or 3 days, her feet began to swell and also her face—has not been able since to use hands or feet. Can't walk ; her brother was able to speak loud until near his death.—Thinks the Monday before his death he said he thought he should not recover ; remarked he thought he had taken additional doses from her mother and Mrs. Bannister.

CROSS EXAMINATION.

George Peake left Wednesday morning to work for Mr. Perrin, by a previous agreement. Witness warmed the hash in an iron pan ; when witness called her father and brother to dinner, the prisoner was in her room—recollects she came into the kitchen once while witness was getting dinner ; has no recollection that prisoner went into the buttery that day—prisoner said she should not eat any of the hash. Mother was kind and did all she could until the Doctor was sent for. Witness had no cramp in the stomach nor cold sweats, but sweat some. Mrs. Bannister recommended salt and water ; don't know who prepared it ; mother gave it to witness.—This was Sunday. Witness made the custards on Friday and thinks mother ate of them. Witness' limbs were never swollen before eating the hash. Witness' half sister, Mrs. Bannister, was at her father's on Friday and Saturday. Witness went to her father's in June last. Mother was absent a good deal, but don't know where. On Monday previous to the sickness of the family, mother went out to pick some berries ; witness who was in her bed, heard some one in the buttery and soon after Miss Paine came up stairs. Sometimes prisoner would stay from home all night without letting family know where she was. Ephraim disposed of his property on the day of his death. Mother was troubled a good deal with pain in her head. Her head troubled her a good deal before the 13th of August last. Witness and mother, July 1, 1835, went to Royalton to Burchard's meeting ; two days after this and same week, mother went again in company with Mrs. Bannister as she said, and after that went again and on foot, but don't recollect the day.

Sarah Perrin. Is a daughter of Mr. Peake. First learnt of the sickness of brother on Saturday afternoon. Mrs. Wakefield came for witness ; went there Sunday forenoon and found them quite sick ; sister Fanny was on the bed sick, and Ephraim in great distress at his stomach ; was with him most of the time till his death. Doctor Penber drove up as witness went into the house. The Doctor was in the room with Ephraim—mother was also there. Witness observed to the Doctor that Ephraim had a strange sickness :

he replied yes. Witness asked him if he did not think he was poisoned with arsenic? Doctor said he did not see what he had thrown off his stomach; prisoner, on witness' making this enquiry, dropped her head on to her hand and soon after left the room and went to her chamber where she appeared to be sick. On witness' going up stairs prisoner said there was great pain in her stomach and that her head ached; said she wanted witness should go down and throw out some medicine in a cup which stood in Ephraim's window; was afraid they would take more of it and it would hurt them; witness was busy and did not empty it. When she went into prisoner's chamber the second time, she asked witness if she emptied the cup; witness replied she had not, but would—went down and took the cup but did not empty it, as Ephraim wished it might remain till the Doctor come. Doctor Carpenter on his arrival put the contents of the cup into two vials and took them off. Sunday night Ephraim said he did not think he should recover—Monday he was easier; on Wednesday there was no prospect of his recovery—said he should not recover; had bloody and green discharges as early as Sunday night, which followed him up. On Sunday night he told witness that prisoner gave him some drink in the morning and he thought it was arsenic, as it tasted as the hash did; that he had, during his sickness, taken such drinks both from his mother and half sister, Mrs. Bannister; was well as he ever was till he ate his dinner on Wednesday, that he put some swill to the hash and carried it to the hogs, &c.—he went out to work and vomited, as did his father. On the day of Ephraim's death and while Ephraim was dying witness went to prisoner's chamber and told her that Ephraim was dying; she said she did not believe he could die till he had confessed to her for accusing her of poisoning him.—After his death witness went up and told prisoner that he was dead. She wept, and said she wished she could have seen him before he died. On the next day witness asked prisoner if she could realise that she was the means of Ephraim's death? Prisoner replied she was; said she put poison into the hash, but did not know why she did it; said they had lived in good union—had nothing against Ephraim or Fanny; it must have been the work of the devil, and she was not in her right mind. Mrs. Perrin had a cup in her hand and prisoner observed that was the cup she took the poison from; afterwards she told how she had felt previous to the transaction: said she felt tall and as high as the trees. Never saw prisoner insane.

CROSS EXAMINATION.

When witness went to her father's she found prisoner doing what she could for Ephraim and Fanny; when prisoner went into the chamber she had a fit of the hysterics; 12 or 14 years ago she had two severe fits of the same character. Prisoner did not leave her chamber till Ephraim's death; she was then led down to see the corpse. She had two more fits the same night; she has been sub-

ject for several years to sick head ache. Ephraim was engaged to a Miss Paige, who resided some two and a half miles from Mr. Peake's. A brother of Ephraim resided at the same place. Both were sent for on the day Ephraim died.

Daniel Perrin. On Wednesday morning before Ephraim's death, Ephraim said his ease was desperate; was confident that poison was the cause of his sickness—that he had taken it in drink from his mother and sister, Mrs. Bannister, and that Miss Lucy Paine had advised and aided in the matter. Witness asked him if he wished witness to aid in entering a complaint: said he did, and witness and Mr. Persons entered the complaint. Some years ago Mr. Peake posted his wife, the prisoner, as she traded too much.

Mrs. Lucretia Murch. Friday evening, after Ephraim's death, went to Mr. Peake's and asked prisoner when she was taken sick? she answered, on the same day that Ephraim was taken sick; her stomach appeared irritated, and witness asked her if she would have some tea; prisoner said she never wished to see any again; that some tea had been found in the house mixed with a white powder, which was ink-powder. On Saturday morning, 22d Aug., prisoner told witness that she put arsenic into the hash, and said she could not have been in her senses; said she procured the arsenic at Royalton during a protracted meeting, and described the person of whom she purchased it; said it was at Fowler's store; no one was present except the clerk of whom she got it. Said the young man of whom she purchased it was small, slim, and of a light complexion and had on light pantaloons; she called for an ounce and paid quarter of a dollar, brought it home and put it into her trunk, which had a lock; the day before she poured it into a cup that was used for a salt cup; that on Wednesday morning Fanny proposed making a warm cake, and she prepared the hash—that after putting the hash into the pan she, the prisoner, sprinkled the poison on the hash; that it being highly seasoned but little of it was eaten; that Fanny got the dinner, boiled more potatoes and put with the hash, of which they ate hearty at dinner; said she would not say that she ate any of it in the morning or at noon. Said that on Thursday, she, the prisoner, made some custards in a tin pan, then poured it into the cups and put in the arsenic; said she would not say whether she ate any of the custards or not, and inquired of witness who would know which had the poison in it? She then remarked that she could not have had her senses when she did it, as no one in their senses would do it; said her derangement was occasioned by trouble in the family; was sorry she had done what she had; had nothing against Ephraim except she thought he had procured his father to prohibit her using his property; thought it was unjust that she could not live with her children instead of his; it was unjust for Mr Peake to deed her property to Ephraim and force her to live with him, Ephraim, instead of her own children; that after the deed was executed and Ephraim,

had come to live at home, she had not enjoyed herself at home; had no conversation with Mr. P. except in a jaw after the deed; had not lodged together; had wished herself dead and would rid herself of living as she did; regretted that she had not taken her own life instead of being left to destroy the family. Mrs. Perrin then came in, and she thinks Miss Paine also; Mrs. Perrin inquired of prisoner if she was sensible that she was the cause of Ephraim's death and the sickness of the family? Prisoner replied, she was. Witness then inquired if she was the sole cause of his death? She answered, yes. She requested witness to pray for her, if she could pray for one as guilty as she was; said she should like to have Mr. Washburn pray with her, but thought no one could. Mr. Washburn then came in and inquired if she was the cause of Ephraim's death? She said she was. She then undertook to relate the circumstances to him, and equivocated; seemed to have lost her sensibility; regretted she had not hung herself on Wednesday; said she must now suffer it from men's hands; said Mr. Washburn said so, and when witness looked doubting, she observed, he said as much as to say so.—During the same day she related to witness the same story. After the funeral and on the same day, her son George came into the room and his mother asked him how he did, and appeared to wish to talk with him alone, which he declined; said it was a hard thing that she could not talk with her children alone. George replied, she probably would not have the privilege. Said she must now suffer for this deed: George replied, "if you was not guilty you would not have it to answer for"—and added, "now poor Ephraim is in his grave." She replied, "I know it," and said, "my child, take warning"—which she repeated three times with emotion. Would not tell witness what she had done with the residue of arsenic; said she put it into a brown paper on Thursday; had made use of none in food after that day. Witness observed to her that she should have thought they would have tasted it in the custard: prisoner then described the looks of the arsenic, and said it would not give an unpleasant taste to the custard; it was sweet, as she had been informed, but had never tasted it. Said during her derangement she felt very tall and eared not what she did to the family; had kept the arsenic on hand, and at times thought of using it, but from a sense that it was not right had not done it. Said that on Wednesday she thought it was not right, but after she had resolved to do it, she did not think much about it.

CROSS EXAMINATION.

At first prisoner thought the secrets of the heart would not be revealed in another world—afterwards she expressed a different opinion. She appeared feeble and shed tears. Prisoner at no time said she put any arsenic on the hash at noon, what she put into it was done in the morning before breakfast. She appeared much excited during the whole conversation; she said nothing about putting ar-

senie into any liquid. I was under the bed when I heard the conversation between the prisoner and her son George; went under on purpose to hear what should be said. Mr. Eastman and others advised me to do it.

Deborah Bebee. Was first at Mr. Peake's on Sunday morning and watched with Ephraim. He thought he had taken a second dose; did not know what he had taken; thought he must have ate or drank something poisonous. Was in prisoner's room and heard her ask Mrs. Perrin if she had emptied the cup, who replied she had not; prisoner wished her to do it, as it might injure *them* if they took any more: but it was not done, and the contents were put into two vials by Doct. Carpenter. Ephraim thought it was poison, as it occasioned the same feelings as the hash did. On Wednesday before his death Ephraim related the circumstances of his sickness, of giving the hash to the hogs, &c. On the day of the funeral witness went into prisoner's room, when she observed to witness that she did not know but she had poisoned them. Said she got some *medicine* at Royalton—didn't know whether it was ratsbane or calomel; they looked much alike; didn't bring it home; just as she got out of the meetinghouse a woman stepped up and inquired if her name was Peake? on being answered in the affirmative, stated her brother Tower, of Northfield, had sent for calomel, and she handed her a 20 or 25 cent piece. She went into the store, got one ounce and paid 25 cents for it, brought it out and put it into the girl's basket and had not seen it since; brought none home; didn't know that she had given poison to Ephraim—if she did, must have been insane. Did not know where she got it; the girl must have given it to her. She put it into the hash and took it from the dish in which salt was kept. Asked prisoner if she did not put water into the cup that contained the poison and give it to Ephraim? she replied, she didn't know; if she did, she must have been crazy, &c. Said the arsenic about half filled the cup.

CROSS EXAMINATION.

The prisoner said she had no knowledge how the arsenic got into the cup; supposed the devil put it there. Did not know as she put the poison on to the hash—if she did, it was at noon; said the cup stood in the cupboard; said that at noon she did not feel well and did not eat of the hash. Knows prisoner—she has for years been troubled with the headache.

Edward Eastman. Called at Mr. Peake's on Friday after Ephraim's death, and was in prisoner's room in the evening. Prisoner was apparently unable to converse when witness went into the room. Those who were present withdrew and left witness alone with her. Prisoner remarked they had suspicions of her. Witness asked what they were? She answered, when she was at Borchard's meeting at Royalton, and came out of the meeting, a girl came and requested her to go to the store and procure some arsenic. Gave

her 25 cents ; she the prisoner came out of meeting with Nancy Bannister, who went to the wagon, and she, the prisoner went to the store with the girl ; girl stopped at store door ; prisoner went in and purchased the arsenic and gave it to the girl. She believed that it had been conveyed to Mr. Peake's by the same girl. Said she was absent day before hash was ate, and it was conveyed there in her absence. Same evening she said she supposed the whole family were poisoned at dinner, herself among the rest ; had a hash, custard, and a warm cake on the table ; prisoner said she was unwell and ate of custard only—rest of family ate of the hash ; thought hash and custard were poisoned—cake not. On the next day, the day of the funeral, prisoner consented to see the corpse, and witness assisted her down ; she remained in the room a few minutes, then retired. When she went back to her room witness remarked that he believed she had not the previous evening told all she knew, as she appeared much agitated. Prisoner then said she had been much to blame. She remained silent a few minutes and as witness was leaving the room he enquired if she wished him to call again ? Said she did. After she returned from the corpse, say half an hour, she cried out "O dear ! O dear !" About half an hour after she said she had a recollection of taking arsenic out of a cup and sprinkling it on the hash ; didn't know how it came there, nor what made her do it—believed it was the devil. Said she procured the arsenic at Royalton for her own use ; she disclaimed all knowledge of their being poison in the drinks. After witness had assisted the prisoner part way down stairs, she appeared to be very weak and faint ; wanted us to let her lay down ; this we declined doing, but let her sit down. On her return she went up stairs pretty quick, without assistance.

CROSS EXAMINATION.

Went up stairs to see prisoner from curiosity ; remained in the chamber to obtain confessions and see what she would say. Don't recollect that I ever told Mr. Hibbard or any other person that I went to the prisoner to see what confessions I could obtain from her. Thinks prisoner supposed witness to be her friend. When she went up stairs witness pulled back a little to ascertain whether she was as weak as she pretended. The cup containing the arsenic she said was in the buttery ; said she was poisoned as much as the rest of the family. In speaking of the poison she sometimes called it ratsbane, at others arsenic. At times, she said she had been out of her right mind, and was so when she put the poison on to the hash. I asked her "if she didn't get the arsenic for her own use?" and she replied she did, as before stated.

Susan Turner. The day after the death of Ephraim was at Mr. Peake's, and asked prisoner how she could do this dreadful thing—what made her do it? She replied "the devil, she supposed." Witness then said to her, you did do it, then? She answered, no. Ask-

ed her where she got the poison ; she said at Royalton. Said she asked her if she was Mrs. Peake ? She replied she was ; girl said go with me ; the girl said her brother in law wanted some of this stuff, and requested prisoner to go in and get it, and gave her 25 cents to purchase it ; she went into the store, procured it and gave it to the girl. Said she did not know who the girl was ; thought her the daughter of her brother in law, Mr. Tower ; had never seen her. Witness asked her what the stuff was ; she replied it was calomel or ratsbane—said she got an ounce.

CROSS EXAMINATION.

Has been long acquainted with the prisoner, and ever since she lived in Randolph. She has children by Mr. Peake ; one is in her 25th year.

Jesse Robinson. Went to Mr. Peake's and watched with the corpse on Thursday night, and staid till Saturday. Thursday evening was in prisoner's room, and she was talking with Mr. Bebee. She asked him if she could prove that she let Fanny Tower have the same quantity of calomel or arsenic, if that would not clear her ? Bebee replied he did not know ; was not acquainted with the circumstances ; she then said she was at Mr. Burehard's meeting and a girl wished her to go to the store and get the ratsbane ; she went ; got it, and gave it to the girl ; supposed the girl to be Patty Tower of Roxbury ; said the girl wanted it for her father who was a farrier ; prisoner wanted to see Patty, as she thought she could prove by her that she let her have the same quantity that she bought. Next day, people talked of sending to Roxbury to see if prisoner let Patty have any thing as stated. Prisoner then said she did not know who the girl was ; said she had on a black apron, &c. Witness assisted prisoner down to see the corpse ; she went back without much assistance. Shortly after was in prisoner's room, and she observed to witness that she supposed the minds of the people were that she had poisoned the family, &c. Witness replied she must know whether she had done it. She replied she should not have done it if she had been in her right mind ; the family had always used her well. Witness asked her, if she did it, and when ? replied if she did it, it was on Thursday : said she had no recollection of bringing any thing home from Royalton ; but she found something in her hand that looked like the stuff she got at Royalton—it was in a paper ; she poured out enough to fill the white of a teacup, and the rest she carried out doors ; didn't know whether she burried it, or a part of it ; then placed the cup in the cupboard where they kept the salt. When the hash was prepared for dinner, she set down at the table and took the cup, and with her fingers sprinkled it over the hash ; then set the cup back where she took it from ; afterwards moved it on to the top shelf. Said she prepared the soda water for Ephraim in the same cup ; don't know whether she emptied the contents of the cup before preparing the soda. Witness

was at Royalton, and a girl clapped her hand on her shoulder and asked prisoner how she could do what she did? She replied, that the family used her so bad, when she first lived with them, that she was determined not to live with them any more; when she first lived there, they beat and turned her out of doors. Said Ephraim had injured her. When he and his father went to Mr. Nutting's to draw writings about the farm, she wished to go with them; Ephraim said it was not necessary that she should go; he and his father could do the business; he stood facing her with his whip and coat on; she said she should go, and he said she should not; and snapped his whip at her.

CROSS EXAMINATION.

Witness never told Wells Hibbard that he was going up to see what he could get out of the old woman, and that he would see her hung. Prisoner said she did not eat any of the hash; witness told her he should suppose they would have noticed it when she sprinkled on the poison; she replied, it was white, like salt. Witness got the idea that all were at the table when she sprinkled the hash, &c. Prisoner thought the devil must have put the poison into her hand.

Rev. A. Washburn. On Saturday, day of Ephraim's funeral, was at Mr. Peake's and went into prisoner's room, by request; several were in the room. Inquired of prisoner how she did? she replied, O dear! I am dreadfully distressed, in body and mind. Witness asked, what distressed her mind? she soon remarked, "if she did it, she could not have been in her right mind." She appeared to be inclined to dwell upon the death of Ephraim. He observed to Mrs. Peake that it was a solemn subject, and told her he supposed she was aware of public suspicion. She replied she was; but said she had no wish to injure the family, if she had, she could not have been in her right mind. She continued, when they were taken sick, some thought they had eaten something—some thought it was in the water; went and looked in the spring and found there nothing but a little worm, and they thought it might be that. After a moment's hesitation she said, "it was not *that*." Witness asked her if she was not conscious that she was the cause of Ephraim's death? she replied, "she was." Mrs. Murch then asked prisoner if she did not wish to tell witness the great temptation she had? she replied, "yes, I will tell the whole of it." Mrs. M. held up a tea cup and wished her to tell the same story she had formerly told, &c. Prisoner then said "*that* was the cup that had it in;" said she put her fingers into the cup and took out a little and sprinkled it on the hash, but did not think that there was enough to hurt any one; she had no intention of injuring any one; the devil tempted or made her do it; that he purchased it (poison) at Royalton. Said a girl told her she was not acquainted with the merchant and wished her to get it for her; said she was conscious that in that she had done wrong; ought to have told the girl she could not get it; gave it to the girl and that

was all she knew about it. Asked prisoner if she did not bring it home: said she did not know what had become of it; said she supposed the devil put the poison into the cup. Witness told her we should all be soon called to the bar of God to answer for our sins, &c. Prisoner then said to witness that she should be glad to have him (witness) pray with her, if he could pray for such a wretched creature as she was.

CROSS EXAMINATION.

Prisoner was much agitated. Mrs. Murch observed, when prisoner told witness that she did not bring the poison home, "you told me you did;" prisoner said if she put poison on to the hash it was on Tuesday; when she said that she put the poison into the hash she observed she must have been crazy; said that she once came to herself in the woods, and found herself contriving how to hang herself with a handkerchief; had many times come to herself in the woods and seemed as though she had just awakened from a dream.

Peliah Rogers. On the day before Ephraim's death, saw him; he informed witness that he never expected to be any better; said he had no doubt but that he had taken poison, arsenic; thought his mother had given it to him; thought that it had been put into the hash. Witness asked him why he let her take care of him? said he did not know; thought he had taken it three times; said he did not intend to use any of the water in the house; that his mother (the prisoner) had prepared drinks for him several times and brought them to him, but he refused to take them, and the cup he set into the window; that she told him he must take them—that they would at first distress him but would in the end help him.

CROSS EXAMINATION.

Ephraim said he suspected others, Miss Lucy Perrin, and Mrs. Bannister, (prisoner's daughters,) but gave no reasons for his suspicion. Believed Miss Perrin and Mrs. Bannister were as guilty as prisoner; had received poison from three different hands.

Alexander Young. On the day before Ephraim's death, was at Mr. Peake's and found them quite sick. Thursday, the day of Ephraim's death, was there again and saw prisoner, who was much affected, cried. On Saturday, saw prisoner with Colonel Miller; told Miller she bought the arsenic for a girl. She finally said that she bought it for herself; said she put some of it into a salt dish; didn't know but she might have sprinkled some on the hash, and custards. Miller asked her how she came to do it? Said she was kind of deranged. A short time after prisoner married Mr. Peake, there was some trouble in the family. This was 12 or 15 years ago.

CROSS EXAMINATION.

Prisoner is a woman of no education—has not so strong a mind as some—has frequently seen prisoner at work in the field with her husband.

Carlos C. Stone. Last summer was Clerk in Fowler & Neven's store, at Royalton; last June, 1835, a woman called at the store and said a Doctor Tower of Roxbury, had sent for an ounce of arsenic; declined letting her have it, at first, but on advising with a young friend present, put it up for her. She paid twenty-five cents for it, and carried it away with her. Next saw the same woman at Randolph. It was the prisoner.

CROSS EXAMINATION.

Never saw the woman before; this was during the time of Mr. Burchard's meeting. Sometimes I wore white pantaloons, and a spencer; at other times, a frock coat.

Ephraim Tower. Resides in Roxbury, and has lived there about one year—no other person in town of the name of Tower; am brother in law of prisoner; never sent to Royalton for arsenic; none of witness' family was at Royalton during Mr. Burchard's meeting; have one daughter, about 19, whose name is Mary—is not called Patty.

Solomon Burnham. Witness lives about one and a half miles from Mr. Peake's. About one year since, the prisoner came to my house, and told me she had understood that I had advised her husband in the arrangement he had made, with regard to his property; that W. Hebard Esq. told her there was no legality in the division; that her thirds must be set off, which could not be done till her husband's estate was settled; wished witness to advise Mr. Peake to have her thirds set off, that she might live with her own children; that she had as good a right to live with her own children, as Mr. Peake with his; that she had got rid of Mr. Peake's children, and would not live with them again; that if she was compelled to live with them, she should not but a short time; spoke about Ephraim's marriage, and said, he shall not bring the young woman there; that the house would be too hot for them. When going away, she said, mark my words: if I am compelled to go there, we shall not live long together. Witness has been acquainted with Mrs. Peake many years; is very illiterate, but a cunning artful woman; has not, to my knowledge, been in the habit of roving in the fields or woods.

Hannah Peake. Lived in the family of prisoner, from first December to first of June last. Prisoner felt very unpleasant at the idea of Ephraim's coming home to live. Ephraim came home to live between the first and tenth of January, 1835. Prisoner said she would not stay at home, and had some of her furniture moved to Mr. Bannister's, and she went there. Mr. Bannister told Mr. Peake that he could not have her there; he accordingly moved her and her things home. In the evening Mr. Peake came from Mr. Burnham's, prisoner sat down at the table, and said he conducted so she should be crazy; said she was crazy, now; took hold of the table cloth and like to have shook the things off the table; flew round like a wild person; could not get her to her bed. Said, at that time,

or afterwards, if she could not have her will any other way, she would burn the house. Said Ephraim should never bring his wife home, if he did, she would kick her out of doors ; she would be as ugly as she could ; would destroy the fruit trees, &c. ; and witness was told that she did destroy them.

Calvin Blodgett. On Saturday after prisoner was arrested, she was at witness' house ; complained of pain in her head ; said she wished to see witness alone. Witness went into a room, and she requested him to shut the door ; she then enquired what they would do with her ? Witness said he didn't know, but they were bringing heavy charges against her ; that she had put poison into the viands, &c. Prisoner said she bought some arsenic at Royalton, for some person, who requested her to do it ; that she did not know the person ; recollects her looks ; said she did not know what she did with the arsenic ; but didn't know but she took it home with her, and thought she put it into a trunk, where she believed it remained until the Tuesday before the affair ; which day she was crazy ; and put it into the salt cellar. Witness asked her if she put any into the hash ? She replied she didn't know but she did ; if she did, she thought it was salt ; didn't know as she had any doubt about its being put into the hash. This was in the morning, and it was so salt that much of it was not ate at breakfast ; more potatoes were put into it, and it was got for dinner ; said some of the family ate quite hearty of the hash at noon ; she did not eat any, and assigned at the table as a reason for not eating, that she was not well. She ate of a cake ; said they were all sick. On the Monday after this conversation, she said to witness that she buried the arsenic under the roots of an elm tree ; that is, what was left of it ; asked her if she was confident she put it under the tree ; said she was not, but thought she did. Witness told her people had looked there, but could not find it.

CROSS EXAMINATION.

Was brought to witness' house, on Saturday ; was then very much confused ; afterwards she appeared more regular. Judging from the language, witness thought she had no distinct recollection of what was done ; her manner was rather studied.

Doctor Pember. Re-called. Carried the contents of the tea cup in a 6 or 8 ounce vial to Hanover, to have it analyzed. Professor Hale was absent, at the time, and Doctor Mussey thought he could not analyze it, and advised witness to carry it home. On his return, his horse became frightened and run away, and the vial was broken, and contents lost.

CROSS EXAMINATION.

Has been long acquainted with prisoner, say twenty-five years ; has doctored her at times for six or eight years past. She has always been troubled with a severe pain in her head, which witness attributed to the state of the stomach ; don't know but the pain was

occasioned by a disease in her head; has applied blisters to her neck to ease the pain in her head; has been more troubled with head ache than most women; her head ache was what is called the sick head ache. Children, whose parents are insane, are more liable to insanity than children of parents who are not insane. *Monomania* comes on by degrees; sometimes, suddenly. Prisoner's head ache would sometimes last a week.

Doctor Winslow. The effects of arsenic are different; and the effect of a small quantity is pain in the stomach, and attended with a burning sensation and sickness at the stomach and a burning through the whole abdomen, tongue is often swollen and inflamed, eye sight is often destroyed, eyes generally inflamed or irritated, limbs more or less effected, and frequently use of limbs destroyed; a general irritation of the skin; pulse are variable—sometimes small—at others intermittent. People who have taken poison will live from one half hour to 7 years.

CROSS EXAMINATION.

Thinks authors do not lay it down that any disease will produce similar effects of arsenic poison. Cholera Morbus will not produce the burning sensation in the stomach. When a person dies after seven or eight days from taking mineral poison, ulceration will be found in the mucous membrane. Sick head ache is no more liable to affect the mind than any other disease, and persons who are subject to the sick head ache are not so liable to inflammatory disease in the head as those who are not subject to it. When a person dies from effect of poison, it is many times difficult to ascertain it. Insanity is hereditary.

John S. Smith. Thinks Doctor Winslow is correct in all he has testified. Saw Ephraim on Sunday before his death; symptoms were such as attend an inflammation of the stomach and bowels; effects were such as mineral poison generally produces. No other disease but Cholera Morbus would produce so violent effects.

Alfred Pixley. Effects of arsenic depend upon the state of the stomach and quantity taken; a quantity sufficient to produce death would produce sickness, a burning sensation, great thirst, severe pains in the bowels, and perhaps spasms; tongue will be coated—sometimes red effusions and bloody stools follow; eyelids will be swollen and eyes red; limbs will be swollen. Arsenic may be said to destroy life in two ways; and when the dose is so large as to produce death in a few hours, the symptoms would be different from those that would occur when the poison is taken up by absorption; in the latter case symptoms would be like those of an inflammatory disease. Intellect is not generally effected.

CROSS EXAMINATION.

Thinks arsenic would not produce vertigo or drowsiness; sweating does not occur when one vomits freely. Books do not say that the same assemblage of symptoms do not attend upon any disease

that follow the taking of arsenic. When a patient lives seven or eight days, should expect to generally find ulceration; but if gangrene should take place, should not expect to find much ulceration. Gangrene does not always precede ulceration. From dissection alone it cannot be ascertained that arsenic has been taken into the stomach, unless it is reduced to its metallic state. Insanity is hereditary; not so much so, however, as the gout and some other diseases.

Joseph A. Denison. Agrees in the main with Doctors Winslow and Pixley, as to the effects of arsenic. Heard Carpenter and Pember describe Ephraim's symptoms; should think that arsenic would produce such symptoms; heard them describe the *post mortem* examination and the appearances were such as would be produced by high inflammation. Should hardly think that all the symptoms described would be produced by any thing but poison. Unless ulceration is found in the stomach when patient has lived some seven or eight days after the poison was taken, should not dare say that poison had been taken. There is no way of settling the question but by analysis; this is the settled opinion of the profession at this time. Insanity is hereditary; it comes upon the person often times unexpectedly; that is, it first discovers itself by some act of violence.—A person may be sane upon every subject but one.

EVIDENCE FOR THE PRISONER.

Mrs. Blood. Is sister of prisoner; her father died 26 years ago; was insane by turns for six or seven years before his death. Witness' mother died about seven years ago; she had been insane some three or four years before her death; kept her confined a good part of the time; witness visited her mother about seventeen years since, who had a violent turn of insanity while witness was there. A sister of witness also was insane, and deceased when about 60; she had violent turns of headache, very much like Mrs. P. Four or five years last September prisoner, witness, and Mrs. Tower started from Massachusetts, where they had been for a visit; first night they stopped at a public house, and prisoner was much alarmed and agitated; said the horse would be stolen; were thieves around the house; could not get her to bed for a long time; she trembled all over; was deranged about three days. About a year after this prisoner was at witness' house on a visit—after she had been there a short time said she must go immediately home; something was going to happen to her house or family; was all of a tremor and sweat profusely; prevailed upon her to stay till morning, when she left for home. Three years this winter she was again at witness' house, and was confined two or three days to her bed and room by a violent headache. Last March was at witness' again; was in great trouble; was coming to

want. She said Mr Peake had put his property out of his hands.—She did not eat any thing of consequence ; staid at witness' house two days. Witness has one brother who resides in Massachusetts ; he was up visiting his friends in this vicinity some few years since ; was at Mr Blood's, when he was frantic—he ran for the river and was followed and brought back : got up on to the oven—struck the women in the house.

CROSS EXAMINATION.

Can't specify any acts of insanity in witness' father ; he was said to be insane by the family. When sister was insane she talked about being poor, coming to want, &c. This was her principal subject of conversation.

Wm. Blood. Says that his wife's brother, Mr Peake, was up a visiting and while there he was evidently crazy ; tried to get up on to the oven.

Phoebe Tower. Is sister to prisoner ; lived with her father till his death. For two years previous to his death he was insane, and had been for ten years, by turns. On one occasion went to the barn and found him with a rope round his neck, with the intention of hanging himself, as witness supposed. Witness' mother was also insane for about eight years before her death, at times. Her brother is insane by turns—has seen him so. One night witness sat up with him all night ; knows that her sister, Mrs. Temple, is insane by turns ; recollects the circumstance of the prisoner and Mrs. Blood returning from Massachusetts and of the prisoner's conduct at the tavern.—Prisoner has visited witness three times within the last three years. First time she was quite rational and calm. On the second visit, which was in the summer of 1834, she appeared strange ; had great pain in her head ; sweat profusely ; was not inclined to say much ; wished to be out of doors ; looked wild. Was there again last March ; acted strangely ; looked wild—thought something was going to happen at home. All the family have been troubled with pain in their heads ; sometimes the physicians called it the sick head ache ; at other times, a nervous head ache.

Ephraim Tower. Prisoner was at witness' house last spring ; first of March ; was then very sober. On the day she got there, talked about matters at home. Next morning she arose quite rarely ; said she must go immediately home ; something was going to happen ; was agitated ; knew by her feelings something was going to happen.

John P. Pierson. Has been acquainted with prisoner about fifteen years ; thinks she is below par in point of intellect.

CROSS EXAMINATION.

If she had had the advantages of education can't say whether she would be upon a par for intellect.

Samuel Hibbard. Have been acquainted with the prisoner for twenty years ; thinks her below par in point of intellect. Often

passed witness' house on foot or in a waggon; is a roaming woman.

Levi W. Hibbard. Saw Jesse Robinson, when he was going up to Mr. Peake's; he said Ephraim was a clever fellow and he was going to see what he could get out of the old woman; said she ought to have been hung before now; she would have to take the rope; and if she was hung, he should go and see her hung.

CROSS EXAMINATION.

He said this the day before Ephraim died; it was in his (witness') father's field; Robinson was there to collect a small debt of witness' brother.

Samuel Hibbard. Re-called. On the day of funeral had a conversation with Mr. Eastman, who told witness that he had got quite a story from the prisoner, by pleasing insinuations.

Susan Bannister. On the Sunday previous to Ephraim's death was at home; prepared and gave him no drink that day; some five years ago lived with aunt Temple in Massachusetts; then thought her deranged. Says that this last summer prisoner appeared different from what she used to before. Witness was at Mr. Peake's on Sunday, when Mr. Perrin asked the Doctor if he didn't think Ephraim had taken arsenic. Sometime after this, she went out of doors and set down at the corner of the house; said her head ached bad; she had been vomiting a little; has no recollection of preparing or giving Ephraim any drink during his sickness.

Here the testimony material to the case closed, having occupied the Court two days. On Friday morning, Dec. 25, Mr. WESTON opened the argument in behalf of the prosecution as follows, viz:

*Gentlemen of the Jury:—*It falls to my lot to address you, at this time and on this important occasion, on the part of the Government. And while I address you, I ask of you the indulgence not only of your candid, but also your charitable feelings. I am fully sensible of my own inability to present this case to you in that clear and lucid manner which the importance of the case requires; but at the same time, I feel that confidence in the discernment of the Jury, which may render any labored and lengthy argument of the case on the part of the Government unnecessary. You must feel sensible, gentlemen, of the great and paramount importance under our government, of a strict and impartial administration of the

laws, especially the laws relating to the punishment of crimes; for ours is a government of laws. I might point you to many unpleasant scenes which have been acted in various parts of our Union the season past; where either for the want of sufficient laws, or the certain execution of them, the innocent have suffered with the guilty, with scarcely the form of a trial, and in many instances even the pretence of a trial; where for the want of due administration of the laws, an enraged community have taken into their own hands the infliction of punishment, and even death, upon those whom they suppose were guilty of crimes, or dangerous to the public safety; and in this indiscriminate action of an excited people, many unoffending citizens have suffered death. And the only security we have that these tragical scenes will not soon be acted in Vermont, lies in the sure and impartial administration of the laws. So long as community know and feel, that courts and Juries perform the duties assigned them, by detecting and surely punishing the guilty, so long will the people be satisfied to leave the punishment of crimes where the laws have placed it. I would refer you, gentlemen, to the neighborhood where the prisoner resided, at the time of the funeral of Ephraim Peake. All the evidence of the guilt of the prisoner was then and there freely circulated among the large concourse of people assembled on that occasion; but all was order; no one raised, or proposed to raise a violent hand against the prisoner. Why were they so orderly? Why did not an excited people, instigated by a just feeling of indignation, inflict upon the prisoner that meritorious sentence which the laws of God and man have pronounced against the man-slayer? It was because they had implicit and unwavering confidence in our courts and Juries, and were fully persuaded, that, if the prisoner was guilty, the laws of the land would surely detect and punish her, and render to her a "just recompence of reward." And you, gentlemen, should not be instrumental in destroying that confidence which community feel in the certain execution of the laws. It becomes you, therefore, gentlemen,

on this occasion, impartially and fearlessly to try the prisoner at the bar, and if the testimony which has been given you in the case is sufficient in your minds to prove her guilty of the charges in the indictment, to say so like men, and indulge in no unreasonable doubts, nor imagine and suppose things on which to rest doubts. To be sure, you as rational men, must be convinced of her guilt; but when so convinced, you will promptly pronounce the verdict *guilty*.

I will now, gentlemen, call your attention to the testimony which has been given you in the case; which testimony we contend is amply sufficient to warrant you in finding the prisoner guilty of the charges against her.

In the first place, it is sufficiently proved to you by many witnesses, that on the 20th of August last Ephraim Peake died.

In the second place, I will call your attention to the testimony which tends to prove that Ephraim Peake came to his death by means of taking arsenic. We have proved to you, gentlemen, that the prisoner had arsenic in the house under her control for several weeks previous to the sickness of the deceased. Fanny Peake testifies, that in the fore part of July, the prisoner went to Royalton, and Mr. Stone testifies, that about that time he sold the prisoner an ounce of arsenic; and the prisoner told Mrs. Murch and Judge Blodgett, that she brought the arsenic home and put it in her trunk. We have also proved to you, gentlemen, that the symptoms and appearances which attended the deceased during his sickness, were such as usually succeed the taking of arsenic into the stomach; for which I refer you to the testimony of the physicians and nurses who attended him during his sickness. They tell you that he was much distressed, was sick at his stomach and vomited, had great pain and burning at the pit of his stomach, attended with prostration of strength, extreme thirst, a coated and swollen tongue, redness of the eyes and eye lids; that his limbs were swollen, accompanied with numbness; that he had a peculiar sensation of the skin, with eruptions upon it, and

was greatly distressed for breath. Six Physicians have testified, and told you, that these are symptoms which may be expected to follow the taking of arsenic into the stomach. I will also call your attention, gentlemen, to the testimony of Doctors Carpenter and Pember, who examined the stomach of Ephraim Peake after his decease. They tell you that the stomach, and all the parts contiguous, indicated that there had been a high degree of excitement; that upon the stomach and mucous membrane, there were spots or patches of a greenish color, approaching a gangrene, and that they found an unusual quantity of water about the heart. They, together with the other physicians, have told you, that these appearances are such as may be expected where death is occasioned by the taking of arsenic; and that in their opinion, all the symptoms of the deceased during his sickness, and the appearances manifested at the *post mortem* examination, taken together, cannot be attributed to any other cause than the taking of arsenic into the stomach, by means of which death is produced.

[Here Mr. Weston cited Beck's Medieal Jurisprudence, and read from page 181 and 182 and many of the succeeding pages, showing that the symptoms that attended the deceased during his sickness, and the appearances at the *post mortem* examination, were such as usually attend the taking of arsenic where death ensues in from 6 to 9 days.]

And now, gentlemen of the jury, from the evidence which is before you on this point, and the authority which has just been read to you, we think you cannot but come to the conclusion that Ephraim Peake came to his death by the taking of arsenic, and we think you will not entertain a solitary doubt on this point of the case, when you take into consideration the testimony which tends to prove the fact, that arsenic was administered to the deceased, and that too, by the prisoner; and to that part of the case I will now call your attention.

From the testimony of Fanny Peake and Mr. Stone, before alluded to, you are well convinced of the fact that the prisoner purchased arsenic at Royalton, some of the

first days of July; and that she brought the arsenic home and kept it in her possession until the sickness of Ephraim Peake, you are authorized to believe, from what the prisoner told Mrs. Mureh and Judge Blodgett; and having proved to you from testimony, other than the confessions of the prisoner, that she bought arsenic at Royalton, and that Ephraim Peake, beyond any reasonable doubt, came to his death by means of arsenic taken into the stomach, the confessions of the prisoner, that she administered the arsenic to the deceased, may safely be received and relied on. To convince you, gentlemen, that the prisoner at the bar on the 12th of August, mingled arsenic with *hash*, of which the deceased ate, and on the next day with certain *custards*, of which the deceased also ate, I refer you to the testimony of Mrs Mureh, Judge Blodgett, Miss Bebee, Mrs. Turner, Esq. Eastman, Mr Robinson, Rev. Mr. Washburn, Mrs. Perrin and Mr. Young; and from what these witnesses have told you, you cannot hesitate in coming to the conclusion, that the prisoner did in fact mingle arsenic with the *hash* and the *custards*, with intent to poison the deceased. Also, to convince you that the prisoner mingled arsenic with the drink which was given the deceased on the 16th of August, I refer you to the testimony of Fanny Peake, Mrs. Mureh, Mrs. Perrin, Mr. Eastman, Mr. Robinson and Rev. Mr. Washburn, and also to the dying declarations of the deceased made to Doct. Pember, Mr. and Mrs. Perrin, Mr. Rogers and Miss Bebee; and from this evidence, you may well come to the conclusion, that the prisoner on the 16th of August, administered poison to the deceased in his drink; and from the whole evidence given you in the case, you are well warranted in finding, that on the 12th, 13th and 16th days of August, the prisoner at the bar knowingly administered arsenic to Ephraim Peake, whereof and by reason of which Ephraim Peake, on the 20th day of August did die.

It is set forth in the indictment against the prisoner, that she gave the arsenic to the deceased with *malice aforethought*, and with intent to take his life. If you find,

gentlemen, that the prisoner gave the arsenic to the deceased, whereof he died, you are authorized to find also, that she did it with a wicked and malicious intent; for when the fact is proved, that a person has taken the life of a human being, the law presumes it was done with *malice aforethought*. But in this case we have proved to you express malice. We have shown you, gentlemen, by the testimony of Mr. Burnham, Mrs. Murch, Hannah Peake and others, that the prisoner was much disaffected towards the deceased, that she was greatly displeased with the disposition made of the property, and with the deceased's coming home to live, that she had an old grudge against him, and used threatening expressions with regard to him, which go clearly to prove that she entertained revengeful and malicious feelings towards the deceased; and you cannot hesitate to find that she gave the arsenic to the deceased, with *malice aforethought*, and with intent to take his life.

One word, gentlemen, before I close, relative to the attempt on the part of the defence, to prove the prisoner insane when she administered the poison. It is very unfortunate for the defence, that no person except the sisters of the prisoner ever suspected her of being insane; that the physicians who have prescribed for her at various times, and the neighbors who have been constantly conversant with her, for more than 20 years, never discovered that she was in the least insane. But this defence of insanity will not prevail, unless you believe she was insane at the time she administered the poison. To convince you, gentlemen, that she was not then laboring under alienation of mind, I refer you to her conduct during the whole of the transaction. She purchased the arsenic at Royalton, and to elude discovery, falsely told the clerk she wanted it for a Doctor Tower of Roxbury; she brought it home, and kept it concealed 5 or 6 weeks, awaiting the opportunity to accomplish her intent, when her own son should not be exposed; the day she mingled it with the *hash*, she feigned sickness as an excuse for not eating of it herself; she was unusually pleasant and

very attentive and apparently kind in nursing the family until the 16th of August, when she was suspected of giving poison to the family; and while she was thus pretending to nurse the deceased, she was administering to him deadly poison. And will the counsel for the prisoner contend here, that her conduct during that time indicates insanity? It may convince you, that the prisoner, in the words of the indictment, was "moved and instigated by the devil," but I think you are well satisfied that there is not one solitary feature of insanity, in all her management from the time of her purchasing the arsenic, to the time of Ephraim Peake's death.

Gentlemen, I have now, to the best of my ability, performed my duty to the State. I have laid before you the best testimony that the case admits of, and I have endeavored to present that testimony to your minds, so that you might properly weigh it, and that it might have its legitimate effect upon your understandings—and if from a due consideration of the whole case, you have rational doubts of the guilt of the prisoner, it will be your duty to acquit her; but if after a careful examination of all the acts proved to you, you are well convinced, beyond a rational doubt, that the prisoner is guilty of the charges contained in the indictment, you will say she is guilty, and say no more.

Mr. PECK followed, in behalf of the prisoner:

It might be proper, and, perhaps, expected that I should, in an ordinary case, offer to you, Gentlemen of the Jury, some apology for the time that I may trespass on your patience. But on the present occasion I have none to give, save what is found in the all important and momentous question about to be submitted to you. It has fallen to your lot, gentlemen, however unpleasant and responsible the duty, to hold in your hands the destiny of a fellow being. On your decision, and on that alone, rests the hope of life, so dear to us all, of the prisoner at the bar. If your verdict is guilty, her days are numbered, and in a few weeks, and perhaps days, her eyes must close upon

the scenes of this world, and her body be consigned to the dark and mysterious grave. How important and responsible is the duty that devolves upon you, and, indeed, upon all connected with this trial ! To hold in your very breath the life of a fellow immortal, how fearful, how great, the trust ! No doubt each and every one of you would most heartily have rejoiced could you have taken your seats with the rest of your fellow jurors, as spectators, rather than actors, in this scene. But it has happened otherwise. The laws of the land have thrown the prisoner into your hands, and it is with pleasure that I add, we believe she is in the hands of honest, discreet and dispassionate men. But there is another circumstance connected with this case, which, at times, has caused the prisoner's counsel to fear that it was doubtful, whether, under existing circumstances, she could have that fair and impartial trial which it is her right to demand. I allude, gentlemen, to the fact that reports have gone abroad most unfavorable to the prisoner, calculated to poison and fore-stall the public mind. It is not to be disguised that a great excitement was occasioned by the alleged murder of young Mr. Peake, and which has, as yet, by no means subsided. This is by no means surprising. It would be more strange were it otherwise. That the murder of an individual, and the attempt to destroy a whole family, occurring in a quiet and peaceable town of New-England, where crimes of this character are of so rare occurrence and so much opposed to the habits of the people, should arouse the whole community and create an excitement which should extend over the whole country, and find its way into every village and dwelling, is by no means singular. While this abhorrence of crime is all praiseworthy and just, and speaks much in favor of the moral feeling which pervades society, there is great danger that this excitement may endanger the rights and safety of the accused. This is what is to be feared on the present occasion. It is hardly possible, gentlemen, that you can have entirely avoided participating, in some degree, in the feeling that has surrounded you. There can be but little

doubt that many, very many, of those of our fellow citizens who have attended this trial, came here fully convinced in their own minds of the prisoner's guilt; and not only thus convinced but giving utterance to their convictions, thus, in effect, reversing that salutary rule of law and justice, which is cōtemporaneous with, and a part of the common law, that every person is presumed innocent until his guilt is established by legal evidence. We have all lived long enough in the busy scenes of this world to have learnt that men are more or less, and oftentimes imperceptibly, influenced by popular feeling--by the clamor of the day. And when we are called, gentlemen, to the discharge of a duty about which there has been much excitement, it behoves us to be extremely cautious that the opinions and feelings of others do not influence our feelings and warp our judgment.

You will not, I trust, gentlemen, consider this caution ill timed or improper, on the present occasion. That you will endeavor to shut your eyes and close your ears to every thing that may have been or shall be said out of this house relative to the case before you, I have no doubt. And with this determination in view let us proceed to an examination of the prisoner's case. Her situation is certainly more calculated to excite commiseration than prejudice. She is a poor, friendless old woman. She has had friends, and now is the hour that she requires their assistance, but they are not here, or if here, they do not come forward to her aid. She has children and brothers and sisters. Some of them it is true have been present and testified, but it was the strong arm of the law that brought them here. Thus it is, gentlemen, that the prisoner is put upon trial for her life, and though there are those who are bound to her by the strong ties of kindred and blood, yet they are not present to console, aid, and counsel her in this the most trying moment of her life. Whether their absence is occasioned by the belief of her guilt, or from the contumely thrown upon her by the charge brought against her, neither you nor I can determine. But one thing is certain, that the peculiar circum-

stanees under which she is placed imperiously demand and entitle her to the countenance and support of this Court, so far as may be consistent with the discharge of their duty. This has, up to the present moment, been most kindly afforded her, and for it we feel most grateful. Her counsel have been liberally indulged upon every point, which, in their opinion, was necessary to be put into the case for her defence. It remains for you, gentlemen, to pass upon the guilt or innocence of the accused. Before proceeding to the consideration of the evidence, suffer me to call your attention to another question which has an important bearing on the case. Has Government the right to take the life of a subject in any case? This is a right which I need not tell you, that some of the wisest and best men who have lived at different periods of the world have contested with great ability and denied *in toto*. It is a subject which of late has excited much attention—been much discussed, and those who deny the right as well as question the expediency of capital punishments, are daily increasing in numbers. And it is to be hoped that we may all live to see the day when a mode of punishment so revolting to our feelings and which was probably taken from the sanguinary code of the mother country, shall not be found upon our statute. It has not a place, I believe, in the penal code of Louisiana, and has at different times been abolished by several of the European Governments, and the experiment as far as tried has generally been in favor of substituting imprisonment for capital executions. But we will not here stop to enquire into the abstract right of government to inflict this mode of punishment. It is sufficient for our purpose, gentlemen, that this right may be well doubted. This is another reason why you ought and will require the guilt of the prisoner to be most clearly and satisfactorily made out. Has this been done? Has the government made a case upon which you have no doubts? This it was their duty to do before they have a right to ask for a conviction. The first ground, gentlemen, upon which we put the defence is, that independent of the confessions of

the prisoner, it has not been sufficiently proved, either that the deceased came to his death by poison, or if his death is to be attributed to poison, that it was administered by the prisoner; and that those confessions ought not to implicate her, in consequence of the peculiar circumstances under which they were obtained.

The indictment charges that the prisoner destroyed the deceased by mixing arsenic with his food, and the case has proceeded from the beginning and now rests upon the assumed fact, that arsenic taken into the stomach was the cause of his death. No one has intimated an opinion that any other or different poison was administered. The only inquiry then to be made upon this part of the case is, has it been satisfactorily proved that his death was occasioned by arsenic? Where is the evidence of this? Do not all the professional gentlemen who have testified agree that there is no satisfactory mode of ascertaining whether arsenic has been taken into the stomach, but by analysis? that all other tests are too unsafe and uncertain to be relied upon? and that all the most approved medical writers lay down the same principle? This is a question which must be determined by the opinion of medical gentlemen, and on that you must rely. The mode of proof required has not been resorted to—the contents of the stomach were never analyzed. It is true that doctors Pember and Carpenter have stated that the symptoms of the deceased were such as are generally produced by arsenic. They at the same time tell you that the same symptoms, with one or two exceptions, might be occasioned by the attack of sudden and violent disease, such as cholera morbus.—But this evidence, when connected with the appearances of the stomach and surrounding parts discovered on the *post mortem* examination, is not sufficient, if the testimony of the physicians is to be depended on, to establish the fact that arsenic had been taken. The only safe test, analysis, is still wanting. How is the want of this proof attempted to be supplied? Other circumstances have been put into the case as having a tendency to prove the fact—such as the purchase of arsenic by the prisoner at .

Royalton in June last—the trouble in the family, occasioned by the conveyance of the farm by the elder Mr. Peake to his son—and declarations made by the prisoner on being apprized that the deceased was coming to reside with his father. If this were all the evidence in the case you no doubt, gentlemen, would at once acquit the prisoner; for it by no means follows that because she purchased the arsenic and was dissatisfied with the property being conveyed to him and made some foolish expressions in relation to his coming home to take charge of the property, that she intended to destroy him and gave him the arsenic. Evidence of this character would leave the case in too much doubt to convict, and indeed the government do not contend that this evidence is sufficient. They rely upon her admissions as the evidence upon which the prosecution mainly rests—that they remove all doubts from the case and establish the fact, which they have not otherwise proved, that the death of the deceased was caused by arsenic. It is true, gentlemen, that the admissions of a fact, made against himself in a civil or criminal case, when they are understandingly made and clearly proved, are legal evidence and sometimes very satisfactory. But it is a species of testimony which should be weighed with great care and extreme caution. It is dangerous testimony and open to objection on many accounts, even in a civil case. In the first place the party may have been misunderstood, and the meaning intended to be conveyed misapprehended or perverted. So the witness may not have heard *all* that was said at the time, or he may have forgotten some part of it, which would entirely change the character of the whole. In criminal cases, however, this evidence is altogether more objectional and dangerous. When an individual makes confession of guilt on being charged with a crime, it is generally done under the hope and expectation, if not promise, that something favorable to him will result from the confession. They are often made too at a time of great excitement, as in the present case, when the party is hardly aware himself what he does or says. They are generally made, too, to

those who believe the person guilty, and have a strong anxiety for his conviction. Consequently, they generally hear only what makes against the prisoner, and are extremely apt to put the most unfavorable construction on what they do hear. The anxiety that people often have to obtain admissions of guilt, was never more strikingly illustrated than in the prisoner's case. It seems, gentlemen, that nearly all the witnesses who have been called upon the stand by the government, and more intelligent witnessess are seldom seen in a court of justice, were extremely solicitous that she should say something that might lead to her conviction. I do not say, gentlemen, that this wish on their part was improper. It may be well presumed that we might have had peculiar feelings had we lived in their vicinity at the time. But this I do say, that the testimony of those witnesses who relate the confessions of the prisoner, is to be examined and weighed with caution, as they are evidently either much prejudiced against her, or firmly convinced of her guilt. To show you, gentlemen, that it is not always safe to convict on confessions of guilt made by the accused, I call your attention to a few of the many cases where the confessions, though made, have turned out to be untrue. Many years since two men were indicted for the murder of one who, as it afterwards appeared, was still living, and yet one of them, upon a promise of pardon, confessed himself to be guilty of the crime. This case is mentioned in 2 Haw. P. C. 46. S. 36. Another instance is mentioned in the State Trials, where not only the party himself, but his brother, were executed on a supposed confession, although all the parties were innocent. Probably, gentlemen, you all recollect the singular case of the Bourne's who were indicted in this state some few years since for the alleged murder of one Colvin. On the trial it was proved that one of the prisoners confessed the crime, and both were convicted. It afterwards turned out that Colvin was alive and the prisoners were pardoned. How is it in the present case? Were all the prisoner's confessions true? certainly not if the witnesses on the part of the govern-

ment are to be credited. She in her confessions state that she made the custards on Thursday. Fanny Peake contradicts this, for she testifies that she made the custards. The prisoner also stated that she sprinkled the arsenic on to the hash in the morning before breakfast whereas it is proved that it must have been at or about the time it was taken up for dinner, if done at all. You will also find, gentlemen, on recurring to the evidence in the case, that her confessions throughout are variant and contradictory.

[The counsel here went into an examination of the evidence with the view to establish this point.]

Now, gentlemen, suffer me to make the enquiry how do you account for these contradictory confessions? When a person is actually guilty of an offence, and he is goaded on by the stings of conscience to confess his guilt in order to ease his mind, does he vary his statement every time he communicates the story of his guilt? No, gentlemen, the confessions in such cases are uniform and consistent—the offence is not aggravated by a tissue of falsehoods. Did either of you, gentlemen, ever hear or read of a case where the confessions were so extraordinary and inconsistent? What shall we do with them? To what cause can we rationally attribute this inconsistency? Do you believe that the confessions proved were understandingly made? Judge Blodgett told you that when the prisoner was relating her story to him that she did not appear to have any distinct knowledge of what she was saying. This must have been the case in almost every instance. Our mode of accounting for the various and variant accounts given by the prisoner is this: that generally, if not on every occasion when she made the confessions, she was laboring under a partial alienation of mind. This mode of accounting, gentlemen, would remove all the difficulty, and we could all at once understand why her confessions were not uniform. But are we supported by the evidence in the position we now assume? This is a most important enquiry and brings us to the great point in the case. In short, gentlemen, we have

take the broad ground that the prisoner when she administered the arsenic was insane. If this defence is easily made, so it is the most difficult to support. Insanity is so various in its effect and assumes so many different forms that it often defies the keenest intellect to detect it. There are many well authenticated cases where individuals have been insane for years upon some particular subject and their most intimate friends had no suspicion of it. Because an individual is not a raving maniac, it does not follow that he is not insane. It is often times with the greatest difficulty that those physicians who have had the most experience in cases of insanity, are able to detect and testify to insanity in a given case. A remarkable instance of the cunning of a madman was related by Lord Erskine on the trial of Hadfield. One Wood indicted Dr. Momo in Westminster, for keeping him as a prisoner, in a mad house, when he was sane. He underwent the most severe examination by the defendant's counsel without exposing his complaint, but a physician suggesting to Lord Mansfield to ask him what was become of the princess with whom he had corresponded in cherry juice, he showed in a moment what he was. He answered that there was nothing at all in that, because, having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence, but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. On this Dr. Momo was acquitted; but Wood having been carried through the city of London on his way to the mad-house, indicted Dr. Momo over again for the trespass in London, knowing that he had lost his cause by speaking of the princess at Westminster: and such was the extraordinary subtlety and cunning of this mad-man, that when cross examined on the trial in London, as he had been before in order to express his madness, all the ingenuity of the bar, and all the authority of the court could not make him say a single syllable on that topic, which had put an end to the indictment before, although he still had the same indelible

impression on his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding back. The evidence at Westminster was then proved against him by the short hand writer, and Dr. Momo was again acquitted.

[Mr. Peck still further addressed the jury; but circumstances beyond the controul of the publishers render it impossible to give his closing remarks here.]

MR. UPHAM, for the prisoner, addressed the Court and jury.

May it please your Honors, and you, Gentlemen of the Jury: It has been my lot, gentlemen, for the last twenty years frequently to address jurors in behalf of unfortunate individuals who stood indicted for the commission of crime, but I can say, in the sincerity of my heart, that I never rose to address a jury, in a criminal case, under so many embarrassments as press upon me on the present occasion.

The importance of this cause, and the tremendous consequences which must follow a verdict against the prisoner, not only alarm, but in my present feeble state of health almost overwhelm me. The spectacle here presented is sufficient to unstring the nerves of a stronger frame than mine and to melt into tenderness and pity the stoutest heart among us.

Gentlemen, you behold at the bar an unfortunate, friendless, forsaken female, on trial for her life! It is indeed an affecting scene; but thank God it is of rare occurrence in this state. Such is the character and moral rectitude of our citizens that but few crimes of the highest grade are committed within our borders.

It is not strange then that the crime charged upon the prisoner should have produced a great excitement in our community, and caused a great concourse of people to throng this trial. Perhaps it is right that it should be so. It shows that the people are alarmed when they even hear that a great crime has been committed, and that they feel an interest in the impartial administration of justice.

But, gentlemen, when it goes out to the world that a murderer has been committed, and that a person has been arrested and committed as the supposed offender, public opinion is at once made up against the party accused, without any knowledge of the facts in the case.

Rumor, with her thousand tongues, is busy in poisoning the public mind against the supposed delinquent. The circumstances said to have attended the commission of the crime are discussed and weighed, and judgment is pronounced against the unfortunate individual, while he remains a captive in his cell, and long before his day of trial arrives.

The crime charged upon the prisoner has agitated this whole community—a thousand exaggerated stories of her guilt have gone out to an uncharitable world, and public opinion has condemned her unheard. The facts and circumstances supposed to have attended the transaction have been discussed and weighed, in public and private circles, and the result has been, what it always is upon such discussions, unfavorable to the prisoner.

The human mind is so constituted that unfavorable impressions are easily made upon it against a party accused of crime, and when once made it is almost impossible to efface them. Jurors, who have received such impressions, may strive with all their powers and faculties to judge impartially, and yet, in some measure, be influenced by impressions made upon their minds before they took their seats in the jury box. Gentlemen, you have undoubtedly elsewhere heard much of this case, and I conjure you, if any unfavorable impressions against the prisoner have been made upon your minds by what you have heard out of court, to blot them forever from your memories. This the prisoner has a right to demand of you. The laws of her country secure to her a trial by an impartial and unbiased jury. To use the language of another, you should bring to the trial of this cause minds like white paper, on which fear or favor, passion or prejudice, has not made a blot or stain. Passion and prejudice not only cloud the understanding, but warp the decisions of the judgment.—

Indeed, it is impossible for frail man at one and the same time to be the friend of impartial justice and the slave of his passions. Reason, when free and unbiassed, is sufficient for all our purposes; but when passion and prejudice are suffered to usurp the ascendant, that better guide abandons her post and leaves us at the mercy of a deceitful rival. The page of history is full of events illustrating the truth of this proposition. In the lives of individuals and in the revolutions of states and empires, it were easy to trace the fatal effects of passion and prejudice. When the storm of popular fury once gathers, it bursts upon the head of its victim without regard to his innocence or his guilt. Thousands of innocent and upright men have fallen victims to an enraged populace, in a moment of excitement. Others, under the same state of excited feeling, have been hurried to the scaffold to suffer for imaginary crimes! Gentlemen, upon this occasion I beseech you to act with coolness and great deliberation. This case more than any other requires a discreet exercise of all your powers and faculties, for the life of a fellow being is at stake. Yes, gentlemen, your verdict, if against the prisoner, settles her destiny forever; you consign her body to a grave of infamy, and send her immortal soul, uncalled for by the God that gave it, to the retributions of eternity! The duty then which you are called upon to perform, is, indeed, a solemn duty. In your hands, in this particular case, are the issues of life and death. See to it, then, that you commit no error in judgment against the prisoner, for it can never be corrected. One erroneous principle embraced by you, one incorrect conclusion drawn from the evidence in the case, may snap the little thread of life, and all is lost. However well satisfied you may be hereafter of the prisoner's innocence, you cannot awake her from her slumber, for it will be the slumber of death. How important, then, that you proceed to the investigation of this case with a right temper of mind and with correct principles in view.

By the humane principles of our law you are to consider the prisoner innocent of the crime charged upon her

until the government has made out her guilt beyond a doubt. All writers on criminal law concur in saying that a *doubting* jury should always *aequit*. Sir Edward Coke, one of the brightest ornaments of the law, exhorts jurors not to convict in a capital case without plain, direct and positive evidence of guilt; which implies that where there is a *doubt* the consequence should be the *aequittal* of the prisoner. In a case of this magnitude every presumption is to be taken in favor of innocence, for, says the law, it is better that ten guilty persons should escape than that one innocent person should suffer. After examining the whole case if you entertain a doubt, or to use the language of Baron Smith, if your minds be in a state of *oscillation*, you should *acquit* the prisoner.

The wisdom and goodness of our law, said a great Judge, appears in nothing more remarkably than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property are concerned. In such cases the law requires evidence so clear and convincing, that every person the moment he hears it must be satisfied of the prisoner's guilt.

Gentlemen, there is another consideration which should induce you long to hesitate before you pronounce the prisoner guilty; and that is the doubtful right which government has to take life for the commission of crime.— As a general proposition I admit that a government has a right to pass such criminal laws and inflict such punishments as are absolutely necessary for the safety and security of the people. The punishment of death for the commission of crime is not, I insist, absolutely necessary for the safety and security of the people, and therefore, government cannot rightfully inflict it. All power which the government now possesses was originally with the people, and all that has not been transferred to government still remains with them. The people never transferred to the government the right to take life in any case whatever, because they never possessed any such right themselves and could transfer none. Man has no right.

to take his own life, and consequently he can transfer no such right to others.

Again, I maintain that the punishment of death for murder is contrary to divine revelation. "Vengeance is mine, saith the Lord, I will repay." When Cain, the first murderer, returned from the field stained with a brother's blood, the lightnings of heaven did not flash upon him and strike him to the ground. He was expelled from society—a never dying worm fastened upon his conscience—a mark of prohibition was set upon him to prevent his being put to death by angry men, and at the same time a declaration went forth from the high authority of heaven, "whosoever slayeth Cain vengeance shall be taken on him seven fold." If death were the only suitable and proper punishment for murder, why was it not inflicted on Cain? He was arraigned as a criminal before the bar of God, and tried and condemned as a murderer, not to die, but to live. The first decision then on record against the murderer was made by an unerring Judge, and made to preserve the murderer's life. Amid the thunders of Sinai too was given the law by Jehovah himself, "Thou shalt not kill;" and yet government claims the right to kill the manslayer. Gentlemen, pause where you are; weigh this subject well before you proceed another step. "Put your shoes from off your feet, for the ground on which you stand is holy."* You are in the house of that God who gave the law "*Thou shalt not kill.*" Stain not your hands, I beseech you, with the blood of this woman, for God her Creator is the only sovereign who hath rightful authority to take her life.

I am aware that the advocates of capital punishment frequently appeal to the Jewish law as a justification for its infliction. The laws given by Moses were intended for the government of the Jews, and were accommodated to their ignorance, wickedness, and "hard-heartedness." Hence he said, "I gave them statutes that were not good, and judgments whereby they should not live," No one,

*Owing to the large concourse of people on the occasion, the Court was held in the house for public worship at Chelsea.—[PUBLISHERS.]

I think, will contend at this day, that the laws given by Moses to the Jews are of universal obligation. Many things were justified and tolerated under the Jewish theocracy that would not at this enlightened period be endured for a moment. If any part of the Jewish law is binding upon us, the whole is: we must adopt the whole law of retaliation—"an eye for an eye, and a tooth for a tooth." When we do this we shall abolish the whole christian code, and treat with contempt the divine mission of our Saviour!

It is further said that the punishment of death for murder is not only founded on the laws given by Moses to the Jews, but that a positive precept was given to Noah and his posterity, that, "Whoso sheddeth man's blood by man shall his blood be shed." There has been much speculation upon the true interpretation of this passage. Annotators say that the text literally rendered decides nothing—for the Hebrew word translated "whoso sheddeth" is a present participle, corresponding to the English word *shedding*, and we have as good right to supply the elipsis by *whatever*, as *whoso* or *whosoever*, and then it would evidently appear that a beast and not man was intended. And this they say would suit the whole connection, for in the preceding verses vengeance is denounced upon the beast that occasions the death of a man. Able and learned commentators say it is extremely doubtful whether human murderers are referred to in this text.—But again, if the passage can be applied to man, it is rather a prediction than a command. It is simply saying, such is the depravity of man that one crime will beget another; that murder will beget murder; he who sheddeth man's blood with violence will in the end be assailed himself, and his blood will be shed in conflict with his fellow man.

The following texts are admitted by all commentators to be predictions rather than commands. "Whoso leadeth into captivity shall be led into captivity." "Whoso taketh the sword shall perish by the sword." "Whoso breaketh a hedge, a serpent shall bite him." "Whoso re-

moveth stones, shall be hurt thereby." Now if these passages are mere predictions, why is not the one in Genesis, which declares that "Whoso sheddeth man's blood by man shall his blood be shed."

Again commentators say if the passage "whoso sheddeth" does refer to all men, and that it is a command, it would not authorize government to take life as a punishment for crime. Whatever vengeance is required by this precept they say is required by the context to be taken by the brother or nearest relative of the person murdered.

Gentlemen, I will for a few moments call your attention to a better dispensation than that which existed among the Jews. I mean the gospel dispensation; the whole tone and tenor of which is opposed to the punishment of death for crime. The language and conduct of our Saviour show that he was opposed to such punishment. He refused to inflict the bloody sentence of the Jewish law on the woman who had forfeited her life by the commission of crime. Upon another occasion he said to two of his disciples who were anxious to call down fire from heaven to consume the Samaritans, "The son of man is come not to destroy men's lives but to *save* them." Again he said to his disciples, "Ye have heard that it hath been said an eye for an eye, a tooth for a tooth: but I say unto you, that ye resist not evil:—But whosoever shall smite thee on thy right cheek, turn to him the other also." This is the language of Him who spake as never man spake. It is the language of that religion which teaches us to love our enemies and pray for them that despitefully use us, and persecute us. Gentlemen, I will detain you no longer upon this branch of the case. I now put the question to you, as you are the judges of the law and the fact in this case, are you satisfied beyond a *doubt* that the government has the right to take life as a punishment for the crime of murder? If you entertain *doubts* upon this point you are as much bound to acquit the prisoner as you would be if you *doubted* as to her guilt.

I know it will be said we have a plain statute law which

declares death the only appropriate punishment for murder, and that you are not at liberty to disregard it. Gentlemen, what binding power has that statute if government has, after all, no right to kill by the gallows for the commission of crime? If the mode of killing pointed out in the statute can be justified, then may the wheel and the rack be introduced as engines of torture and death. In civil cases if a statute law is unconstitutional or opposed to the great principles of rational justice, the courts declare it void, and disregard it. In criminal cases the power to declare a statute law void is with the jury. Gentlemen, you must pass upon this question and settle it one way or the other. If it were not proper for your consideration, the court would have prevented the discussion of it.

The next question, gentlemen, to which I would call your attention is the crime charged upon the prisoner. It is concisely defined by Lord Coke, to be "where a man of *sound memory* and of the age of discretion, killeth any reasonable creature in *rerum natura*, and under the king's peace, by malice prepence, or aforethought, either expressed by the party or implied by law."

To constitute murder, then, the agent must be of *sound memory and discretion*, there must be an unlawful killing of a reasonable being in the peace of his country, and there must be malice either expressed or implied in the slayer. If therefore you are not convinced beyond a doubt that the prisoner administered the fatal poison, and that she was of *sound mind and memory* when she did it, and that it was administered wickedly and maliciously with an intent to kill, and that death was the consequence, you are bound by every principle of law, of justice, and humanity to acquit her.

It is agreed by all law writers, and it is the law of this and every other country, says an eminent jurist, that it is the reason of man which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. Thus it has been a rule from the earliest periods, that though a man be in possession of his senses

when he commits a capital offence, if he become insane after it he shall not be indicted, if indicted he shall not be convicted, if convicted he shall not receive judgment, if after judgment he shall not be ordered for execution.

In a word, it is the mind that constitutes the man. Deprive a fellow being of his understanding and you strip him of every thing that elevates him above the brutes of the field or the beasts of the forest. He is neither accountable to God nor man for his conduct. In contemplation of law he has no existence as a man. He is civilly dead. What degree of mental alienation is sufficient to excuse a person from punishment for the commission of crime is said to be a question of some difficulty. I apprehend, however, that it is not attended with quite so much difficulty as some writers upon the subject have imagined.—The law declares that no person is accountable for the commission of crime unless he was of *sound memory and discretion* when he committed it. The mind of man is either *sound* or *unsound*. When sound he is accountable for his actions—when unsound he is not. It is difficult I know to trace with accuracy the effect of diseased intellect upon human actions. Sometimes reason is entirely dethroned and the individual is a raving maniac. At others we discover from the strange conduct and mysterious movements of the individual that reason though not entirely dethroned, has been shaken in her citadel and frightened from her property. Upon many subjects we find the individual perfectly sane, while upon others we discover his insanity. Lord Coke says *non compos mentis* is of four sorts, *first Idiot*, which from his nativity, by a perpetual infirmity, is *non compos mentis*. *Second*, he that by sickness, grief, or other accident loses his memory and understanding. *Third*, a lunatic that hath sometimes his understanding and sometimes not; *aliquando gaudet lucidis intervallis*, and therefore he is called *non compos mentis*, so long as he hath not understanding.

Lord Hale, in speaking upon the same subject, says there is a partial insanity of mind, and a total insanity.—*Neither* of which, I insist, is an excuse for crime. If I

am not correct in this position, then the difficulty in which courts and jurors are involved when any degree of insanity is proved, is insurmountable. For who can define the invisible line that divides perfect and partial insanity? Who can fathom the recesses and trace with precision the secret motions of a mind deprived in any degree by disease of its soundness and strength? The principle of law that alienation of mind is an excuse for crime is universally admitted, but like every other general principle there may be difficulty in its application. Some persons suppose a man can not be insane unless he raves like a bedlamite—and that every one who appears tranquil and reasons accurately on almost every subject, is sane. Persons who hold this opinion labour under a great mistake. It is said in a work upon Medical Jurisprudence of great reputation, "That there are many instances of decided insanity, where the patient can not only write and read, but converse and argue closely and accurately on every subject, except that on which he is insane." "Every one knows" says the author "when a man is stark-mad, but it is my object to describe a man in that state of insanity, when a common observer, or even a person accustomed to insane persons, can with difficulty discover that he is not of sound mind. Learned and respectable physicians have been themselves deceived, and from being unacquainted with the peculiar hallucination of the patient, have pronounced him sane, when it was well known to those acquainted with the subject of his insanity, that he was a fit object of the restraint of a mad-house." "There is a madness" says the same author, "which shows itself in words, and another in actions. A lunatic may be coherent in conversation but insane in conduct. It is a false notion, that mad-men can not reason; they often reason with accuracy on many subjects, and carry into execution plans, which require subtlety and long continued dissimulation to mature."

Doctor Beck, in his Medical Jurisprudence; in treating upon the subject of mental alienation, adopts the following classification, viz: 1st, *Mania*, in which the hallucina-

tion extends to all kinds of objects, and is accompanied with some excitement.

2. *Monomania* or melancholy, in which the hallucination is confined to a single object, or to a small number of objects.

3. *Dementia*, wherein the person is rendered incapable of reasoning, in consequence of functional disease of the brain—not congenital.

4. *Idiotism*—congenital, from original malconformation in the organ of thought.

The case of the prisoner we maintain falls under the second class, called *Monomania* or *Melancholy*. The form of insanity says Doctor Beck, which most commonly leads to the perpetration of crime is that of melancholy, where the mind broods over a single idea, and that idea may be his own destruction, or the destruction of others.

“There is no species of madness,” says Marc, “which so much deserves the attention of the physician and the jurist, as *Monomania* or *melancholy*.” “It has brought to the scaffold many deplorable victims, who merited compassion rather than punishment.” The learned Monsieur Georget uses the following language upon the same subject. “Unfortunately, *Monomania* is no chimera of the imagination, nor is it a modern disease, it has existed in all ages, but formerly it was concealed under the denomination of melaneholia, of which in fact it is only a high degree. For this reason there can be no doubt that thousands have suffered for crimes, or rather fatal actions committed during moments when reason had no dominion over the individual.” I know, gentlemen, the great difficulties which envelop the subject under discussion, and I feel my inability to do it justice. What can be more difficult than to distinguish between the anger of the sane and the insane? What a striking similarity between the monomaniac, and him who broods over his malignant and revengeful passions. But gentlemen, you must not suffer this subject to pass off with a slight examination, because it is enveloped in difficulties. You must call into exercise all the powers and faculties you

possess, and investigate it like philosophers. The great number of cases which have been read from the books by my learned friend who opened the defence will afford you great assistance in coming to a correct conclusion upon this part of the prisoner's defence. You will recollect that all the medical gentlemen who have testified in this case concur in supporting the doctrine read from the books. The cases read show you most conclusively that a person may be insane upon one subject and perfectly sane upon all others. Insane persons may have a perfect recollection and knowledge of all the relations in which they stand towards others, and of all the acts and circumstances of their lives—and are frequently remarkable for subtilty and acuteness. It appeared upon Hatfield's trial that when he bought the pistol which he discharged, he understood the use of it and knew what he was about: that when he bought the gun powder he knew the use of it: that when he went to the Theatre he knew he was going there and knew every thing connected with the scene as perfectly as any other person, and when taken into custody and examined, nothing like insanity appeared in his deportment or conversation: yet the jury were satisfied that he was labouring under a most fatal delusion. In Wood's case you discover upon every subject but one a well regulated mind: and you also discover the extraordinary art, subtilty and cunning of a mad-man. It is in vain to talk about the artlessness of insane persons; they are frequently the most artful persons in the world. The authorities which have been read show you that they carry into execution plans, which require subtilty and long continued dissimulation to mature. Sometimes the disease pursues its victim with a noiseless tread, and the first notice of the mind's captivity is an irresistible propensity to shed blood. At other times the patient discovers the approach of the disease and desires to be confined until the paroxysm is over. The disease assumes every variety of form and manifests itself in a thousand different ways. Gentlemen, we are the daily subjects of pain, disease and death. Persons apparent-

ly in perfect health sometimes fall instantly dead ! Others, in full possession of their reason are in a moment bereft of it, and commit some daring act of violence upon themselves or others, before their friends are aware of their deplorable condition ! "Insanity," says Doct. Abercrombie, "is in a large proportion of cases, to be traced to hereditary predisposition ; and this is often so strong that no prominent moral cause is necessary for the production of the disease." Gentlemen, this doctrine of hereditary predisposition to insanity is "no chimera of the imagination." Neither is it of modern date ; it has existed for ages. All writers upon mental alienation admit its truth—and all the physicians who have appeared upon the stand in this case have testified to its correctness.

But probably after all the investigation we can make upon this trial, we shall know but very little of the nature and cause of that remarkable condition of the mental faculties which gives rise to the phenomena of insanity. We know that it exists, and we are told by learned men that many causes have a tendency to produce it. But after all we cannot tell what did produce it. Shall we then insist that man is never insane, because we can not discover the cause of insanity ? We might with as much propriety insist that a man struggling in the agonies of death was not sick, because we could not discover the cause of his disease. I have thus far gentlemen attempted to advance and discuss principles which I think have a legitimate bearing upon this case, and should govern it. I will now proceed to the evidence in the case and the application of the principles.

1st. As to the *corpus delicti*, or body of the crime.—Did Ephraim Peake come to his death by taking arsenic into his stomach ? This fact should be made out by positive testimony. Presumptive evidence will not answer. After this fact is proved by positive testimony, the prisoner may be convicted of administering it upon presumptive evidence, because then the presumptions will have something to rest upon, some foundation to sustain them. What then is the evidence upon this point, independent of the prisoner's confessions ? Carlos P. Stone has testi-

fied that in June or the fore part of July last, he was a clerk in the store of Fowler & Nevens in Royalton; that the prisoner called and purchased one ounce of arsenic, and said that a doctor in Roxbury had sent for it. The witness never saw the prisoner before she purchased the arsenic, nor afterwards until he saw her at the court of examination in August. Yet he is positive that the prisoner is the person who purchased the arsenic, although he cannot tell how she was dressed. Certain statements of Ephraim Peake the deceased, made on Sunday after he was taken sick, have been put into the case as declarations *in extremis*. These declarations relate to his feelings after eating the hash, and after taking certain drinks from the prisoner and others. This kind of evidence is never admitted unless it appears that the deceased had given up all hopes of living when he made the declarations. The scenes of this world should be receding from his view and the realities of another should be bursting upon his vision. He should expect immediately to appear before his final Judge to answer for the truth of his declarations. Ephraim Peake, on Sunday, I insist, did not view himself in this condition. Since this evidence was admitted it has turned out that on Monday he expressed his belief that he should recover from his sickness. And it is also in evidence that he did not send for the young lady, whom he was about to marry, until Thursday morning, the day of his death, although she lived only three miles from him. He did not make any disposition of his property until the morning of his death. These facts, gentlemen, ought to satisfy you that all hopes of life were not given up until the day he died. And if you are convinced of this fact you should lay all his declarations out of the case, as improper evidence. Doctors Pember and Carpenter have testified that they attended the deceased during his sickness, and have described his symptoms as being such as would be likely to attend the taking of arsenic into the stomach. They also made a *post mortem* examination and found the stomach in a high state of inflammation, but discovered no ulcerations of the mucus

membrane. On cross examination they said that sudden disease might have produced all the symptoms they discovered, and all the inflammation in the stomach. Doctors Winslow, Dennison and Pixley, think the symptoms described by the physicians who attended the deceased such as would be likely to appear by the taking of arsenic into the stomach. Doctor Dennison says it is impossible to tell, by dissection alone, whether the death was occasioned by the taking of arsenic or not. That question can only be settled by submitting the contents of the stomach to chemical analysis. If the metal can be produced, then the conclusion is safe that arsenic produced the death, if not, it is uncertain what produced it. There has been no analysis of the stomach in this case, consequently you can not say, with any degree of certainty, what was the cause of the deceased's sickness and death. Fanny Peake has described her feelings after eating of the hash, and after drinking what her mother, the prisoner, gave her to turn her sickness. The physicians who heard her testimony say that such feelings and symptoms as she has described would be likely to follow the taking of arsenic. No arsenic has been found about the house of the prisoner. Neither has the drink, taken away by Doctor Carpenter, about which so much has been said, been analyzed. You can not, therefore, say that it contained arsenic. The deceased lived nine days after he was taken sick, and if there were no other evidence in the case, it would be impossible for you to find that his death was occasioned by arsenic. Sudden disease might have caused his sickness and terminated his existence. There is another species of evidence put into the case upon which much reliance is placed by the learned counsel for the government. It is the *confessions* of the prisoner. Upon this kind of evidence thousands have been convicted and executed when it turned out afterwards that they were entirely innocent of the crime which they had confessed themselves guilty of. Every writer upon criminal law gives more or less instances of such convictions.

Mr. Starkie, in his work upon evidence, gives an instance of two men charged with the murder of one who, (as it appeared afterwards,) was still living, and one of them, upon an expectation of favour, confessed himself guilty of the crime. Another instance is mentioned in the State Trials, where not only the party himself, but his brother, were executed on a confession of guilt, although all the parties were innocent. Mac Nally, in his work upon evidence, gives an instance of three men who were tried for the murder of Mr. Harrison, at Camden, and one of them confessed himself guilty of the murder, and a few years afterwards it appeared that Harrison was alive.

In Upham's account of the Salem Witchcraft, speaking of the convictions for that offence the writer says, "But there is one species of evidence which renders all the rest unnecessary, and overwhelms the minds of the court, the jury and the public, and perhaps the unhappy persons themselves with convictions. The confessions. *Fifty-five* persons, many of them previously of the most unquestionable character for intelligence, virtue and piety, acknowledged the truth of the charges that were made against them. Confessed that they were witches, and had made a compact with the devil. The records of their confessions have been preserved. They relate the particulars of the interview they had with the evil one."

Gentlemen, I will give you another instance, in our own state, of a conviction for murder upon the confessions of the prisoners, where it afterwards turned out that the man whom they confessed they had murdered was alive.

Some fifteen or sixteen years ago two men by the name of Bourne, residing in Bennington county, were indicted for the murder of Russel Colvin, who had ten or twelve years before, suddenly disappeared. The current of public opinion was strong against them: bones had been found secreted, which respectable physicians testified were human bones. The prisoners were frequently visited by various individuals for the purpose of drawing from them

confessions of their guilt. And, innocent as they knew they were, they confessed they had murdered Colvin.— They gave the particulars of the murder. They said they struck him on the head with a pine knot and killed him: that they buried his body in the old cellar hole: that after three or four days they took it up and put it under the new barn: and that when the barn was burned they took up his bones and threw them into the river. Upon this confession they were convicted and sentenced to death. After their conviction and sentence the current of public opinion which had set so strong against them began to subside. Some few persons began to doubt their guilt, and finally an advertisement issued, offering a reward to any person who would look up Russel Colvin, the man whom the prisoners had confessed they had murdered. About ten days before the time assigned for the execution of the prisoners, Russel Colvin made his appearance in Manchester, and was recognized by his wife and all his former friends and neighbors. Now, gentlemen of the jury, I ask you to account for the confessions of guilt in the cases to which I have referred. They were not the out-breakings of guilty consciences, because the persons who made the confessions were innocent of the crimes charged upon them. You can only account for them upon the supposition that the human mind, under the pressure of calamity, is easily seduced, and liable in the alarm of danger, to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail. The law looks upon this species of evidence with great jealousy, and guards it with extreme caution. A confession which is obtained from a prisoner by the impression of hope or fear, however slight the emotion may be implanted, is not admissible evidence. For the law will not suffer a prisoner to be made the deluded instrument of his own conviction. In weighing these confessions, gentlemen, it is important that you should bear in mind the circumstances under which they were made.— On Sunday the prisoner knew that she was suspected of having poisoned the family. And in the afternoon of that

day she went to her chamber, and there had a fit. She remained sick in her chamber until after Ephraim's death. When informed by Mrs. Perrin that Ephraim was dying, she said she did not think he could die until he had confessed to her for having accused her of poisoning him.— Soon after Ephraim's death, Mrs. Perrin went again to the prisoner's chamber and told her he was dead. At this time Mrs. Murch sat upon the prisoner's bed like a cormorant on the tree of life,

"Devising death,
To them who live."

Mrs. Perrin says her mother appeared much affected when she told her Ephraim was dead. She further says that she asked the prisoner if she could realise that she had been the cause of Ephraim's sickness and death, and she said yes. Mrs. Murch then said to the prisoner, "You say then you did put the poison in the hash," the prisoner answered "yes, but I do not know what I did it for, I had nothing against Ephraim or Fanny, I could not have been in my right mind; it was the work of the devil."

The next confession was made to Mrs. Murch on Saturday, the day of Ephraim's funeral. You probably discovered gentlemen, that this Mrs. Murch was an artful as well as intelligent witness. She spent much time with the prisoner for the purpose of drawing confessions from her, and has come here to testify to such as she thinks she did draw from her, with strong prejudices against her. Notwithstanding her apparent candor in saying that she would disguise nothing, she took good care to conceal the fact from you that she secreted herself under the prisoner's bed, for the purpose of overhearing the conversation between the prisoner and her son. This witness you will recollect went to the prisoner's chamber and reminded her of the solemnity of the scene that was passing, and spoke of the awful retributions of a Judgment day, and also of a promise of pardon to all who confess and forsake their sins. I find no fault, gentlemen, with these remarks. They were well enough, and

perhaps proper. But I do find fault with the manner in which she says she interrogated the prisoner. She knew that the prisoner was distressed in mind and body and in an unfit situation to converse upon the subject of the poison, which it was supposed had occasioned Ephraim's death. But still she pressed her interrogatories and followed them up until she drew such confessions from the prisoner as she desired, and then requested permission to send for the Rev. Mr. Washburn, who was in the room below, to come to the chamber. Her request was granted. And when Mr. Washburn arrived she requested the prisoner to tell over the story to him as she had told it to her. The prisoner then told over the story, but it was not the same she had told the witness. The prisoner in her conversation with Mrs. Murch, and also with Mr. Washburn, said if she had done the act, she must have been deranged.

Another confession was made to Edward Eastman.—This witness told Mr. Hebard, after he had drawn out the confession, that he had made the prisoner think he was the best friend she had in the world, and in that manner got a long confession of guilt from her. He also, as Mrs. Murch says, advised her to conceal herself under the prisoner's bed to overhear the conversation she had with her son.

Jesse Robinson has testified to a confession of guilt made by the prisoner to him. This witness, it appears, when he was going up to see the prisoner, told Levi W. Hebard that he was going to talk with the old woman and see what he could get out of her: that she ought to be hung, and if she was, he meant to go and see it done. What think you, gentlemen, of the spirit and feeling of such witnesses as Mr. Robinson, Mr. Eastman and Mrs. Murch?

[Here the counsel examined the testimony of the four last mentioned witnesses in relation to the prisoner's confessions, and insisted at some length that witnesses who had sought for confessions of guilt from the prisoner were not entitled to full credit—and that Eastman and Robin-

son were impeached by the testimony of Samuel Hebard and Levi W. Hebard.]

A number of other witnesses have testified to confessions made by the prisoner, but it is unnecessary for me to detain you by repeating their testimony, for you undoubtedly recollect it. You will please to bear in mind, gentlemen, that in every conversation which the prisoner has had upon the subject of poisoning the family, she said if she did it she must have been deranged. And you will also bear in mind the fact that no two of the confessions agree. It appears from the testimony of all the witnesses that these confessions were drawn from the prisoner under very peculiar circumstances. She was stretched upon a bed of languishment, and much distressed in mind and body. She knew that she was suspected of having poisoned the family: that her friends had deserted her and that public opinion was setting strong against her. Was she not then under the pressure of great calamity? Were not her fears much alarmed? In this situation was she not liable to acknowledge indiscriminately a falsehood or a truth, as different agitations prevailed? Hundreds of others and strong minded men too, under the pressure of like calamities, hoping to better their condition, have confessed themselves guilty of great crimes when they were perfectly innocent. Is it very strange then that this ignorant, weak minded woman, surrounded as she was by an enraged populace clamorous for her blood, should have confessed her guilt when she was perfectly innocent, hoping that it would better her condition? Gentlemen, you have seen enough of the uncharitableness of the world, you know enough of the frailty of human nature, to treat these confessions as they deserve. They ought not to weigh a feather against the life of the prisoner. You have been told by the learned counsel for the government that these confessions made by the prisoner were the out-breakings of a guilty conscience, perfectly voluntary, and uninfluenced by any hope of favour. If this assertion were true, the confessions would have been of a different character. In the

first place the prisoner would have confessed herself guilty of the crime charged upon her. This she has not done: she has uniformly said if she did mingle the poison with the food she must have been deranged when she did it.— This most certainly was no confession of guilt, for a deranged person cannot be guilty of a crime. In the second place no two of the confessions which have been testified to by the witnesses agree. How can you account for this? We should naturally suppose, if the prisoner knew what she had done and from the compunctions visitings of a guilty conscience had made confessions of her guilt to different persons, they would agree. This disagreement in the confessions, said to have been made by the prisoner, can be accounted for only upon the supposition that she had no distinct knowledge of what she had done, or that she knew not what she said when she made them. Gentlemen, I will detain you no longer upon this branch of the case, but call your attention to the facts and circumstances upon which I rely to prove the prisoner's *insanity*.

And 1st, I rely upon the atrocity of the crime charged upon the prisoner as evidence of mental alienation. It is too improbable to admit of belief that a wife and a mother in possession of her reason, without motive, could conceive the idea of murdering her whole family at once. Such a deed of atrocity is too much for the female heart. Woman is naturally timid, gentle, affectionate and forgiving. In her bosom no harbor is to be found for vengeance, and fiendlike malice. She was designed by the God that made her to love and obey her husband. The principle of affection was deeply planted in her heart, and her ruling passion was a desire to please and make her husband happy. Thus said Eve to Adam,

"What thou biddest,
Unargued I obey; so God ordains:
God is thy law, thou mine; to know no more
Is woman's happiest knowledge and her praise."

From what we have read and seen of the female character, we should naturally suppose that no wife whose

head had been pillow'd on her husband's bosom for thirty years, could, in the possession of her reason, conceive the idea of murdering him. But, gentlemen, you are called upon by the counsel for the government to say that the prisoner, who has lived with her husband for thirty years, on comfortable terms, without motive, with coolness and deliberation and in full possession of her reason, attempted to murder him and his whole family by mingling a deadly poison with their food. And this is not all: you are asked to believe that while nursing them in their sickness, and hanging over them with apparent fondness, she was wickedly and maliciously mingling the same poison in their drinks. This, gentlemen, is too inercredible for belief. If the prisoner had voluntarily mixed the arsenic with the hash on Wednesday, do you believe that she could have viewed the pain and anguish she had occasioned with apparent tranquility, and repeated the dose on Sunday? No, gentlemen, if she were a rational being, her fortitude must have deserted her. Her heart must have melted into tenderness at the suffering she had produced. If the charge in the indictment is sustained by the proof, then may the records of human depravity be searched in vain for a crime of equal atrocity. Common charity, then, would seem to require that you should believe the prisoner insane, if you find she mingled the arsenic with the food and drinks prepared for the family.

The learned Monsieur Georget says, "An atrocieous act, if contrary to human nature, committed without motive, without interest, without passion, opposed to the natural character of the individual, is evidently an act of insanity." I beg of you, gentlemen, to carry this opinion of the learned French physician to your room and weigh it well before you pronounce the prisoner guilty.

2d. There was something in the conduct of the prisoner, on the day it is said she committed the crime, which shows that she did not know what she had been doing.—She went after her son, who was laboring for one of the neighbors, to come and assist in taking care of the sick, and to go for a physician, if it were necessary. Her son

did return with her, and in the night, at his mother's request, went for a physician. Would the prisoner have been likely to have taken this step if she had understandingly designed the death of any member of the family? It was a step calculated to detect and expose her crime, and if she had been conscious that she had committed one, she never would have taken it.

3d. The confessions of the prisoner which have been put into the case furnish evidence of mental alienation. In the first place, no two of them agree: she never told the story twice alike. In the second place, she seemed to have no distinct recollection of what she had done. In the third place, she uniformly said if she had done the deed she must have been deranged. And in the fourth place, she told Mrs. Murch at times she felt tall as the trees, &c. You have been told, gentlemen, by the learned counsel for the government, that insane persons never say they are deranged, or have been deranged. Is this true? Did not my learned friend, who opened this defence, read many cases from the books, showing that insane persons know when a fit of insanity is coming on, & after the paroxysm is over know that they have been deranged? Did not the mother, who in a fit of insanity requested that her child might be taken from her, for she felt an irresistible propensity to kill it, know that she was insane? And after the paroxysm was over, did she not know that at her request the child had been taken from her to save its life? Most certainly she did. Again, in almost every confession the prisoner made, she represented herself as having been under the influence of some supernatural power. She said it was the very work of the devil, &c. This, says Dr. Abercrombie, is a very common impression among the insane. They frequently imagine themselves under the influence of some supernatural power. They sometimes, he says, represent it as the working of an evil spirit, and sometimes as witchcraft. These confessions, gentlemen, furnish strong and almost conclusive evidence of insanity.

4th. We have proved, I take it to your satisfaction, gen-

lemen, that the prisoner's father, mother and sister died insane; and that they were deranged for many years before they died. It is also in evidence that she now has a brother in New-Hampshire who has been insane. This I consider very important evidence in the case, and I beseech you to keep it constantly in mind. It is a fact well established, say medical writers, that "insanity is, in a large proportion of cases to be traced to hereditary predisposition: and this is often so strong that no prominent moral cause is necessary for the production of the disease." Where a tendency to insanity exists, there may be, in many cases, circumstances in mental discipline, calculated either to favor or counteract the tendency. Much depends on the constitution and disposition of the person, on his pursuits in life and general information. Persons of an uneasy and irritable disposition are more likely to become insane than those who are dull, heavy and phlegmatic. "Insanity frequently commences," says the learned Dr. Abercrombie, "with a state in which particular impressions fix themselves upon the mind in a manner entirely disproportionate to their true relations, and in which the false impressions fail to be corrected by the judgment comparing them with other impressions, or with external objects." Where this hereditary predisposition to insanity exists, a person may give a false importance to a trifling circumstance, and suffer his mind to dwell upon it until he becomes perfectly insane in relation to that subject. The husband of the prisoner last spring conveyed all his property to Ephraim Peake, the deceased. With this conveyance the prisoner was dissatisfied, and made considerable disturbance about it. No provision was made for her support in her old age, and she imagined that she should come to want. She suffered her mind to dwell upon this subject day and night. She travelled about the county from lawyer to lawyer seeking advice upon the subject. Having assisted in accumulating the property, she considered herself entitled to a portion of it. But meeting with no encouragement from the legal gentlemen whom she had consulted, she gave herself up to melan-

choly and despair, and in the end, upon that subject, lost her reason. What, gentlemen, do you understand by the term *reason*? It is that exercise of mind by which we compare facts with each other, and mental impressions with external objects. By means of it we are enabled to judge of the relations of facts, and of the agreement between our impressions and the actual state of things in the external world. The mind in a healthy state has the power of arresting or changing the train of its thoughts at pleasure—of fixing the attention upon one, or transferring it to another—of changing the train into something which is analogous to it, or of dismissing it altogether. This power is, to a great degree, lost in insanity; and the result is one of two conditions, either the mind is entirely under the influence of a single impression, without the power of varying or dismissing it, and comparing it with other impressions; or it is left at the mercy of a chain of impressions which has been set in motion, and which succeed one another according to some principle of connection over which the individual has no control. The mind of the prisoner, at the time it is said she committed the crime charged upon her, was entirely under the influence of a single impression without the power of varying or dismissing it—& that impression was the injustice of the conveyance of her husband's property to the deceased, Ephraim Peake. "The peculiar character of insanity," says Dr Abercrombie, "in all its modifications, appears to be, that a certain impression has fixed itself upon the mind in such a manner as to exclude all others; or to exclude them from that influence which they ought to have on the mind in its estimate of the relations of things. This impression may be entirely visionary and unfounded; or it may be in itself true, but distorted in the applications the unsound mind makes of it, and the consequences which are deduced from it." This was precisely the condition of the prisoner's mind in relation to the conveyance of her husband's property to Ephraim Peake, the deceased. You have been told, gentlemen, that the prisoner is an uneasy, passionate woman. If this

be her true character, she would be the more likely to become insane. Again, she has for the last ten years been subject to severe turns of the headache. This, Dr. Cooper says, has a tendency to bring on insanity, and is frequently the sole cause of it.

5th. We have proved to you, gentlemen, by Mrs. Blood and Mrs. Tower, sisters of the prisoner, that she was five years ago, while in New-Hampshire, deranged for three days. They have told you how she appeared and what her conduct was. If the testimony of these witnesses is to be relied upon, (and there is nothing in the case tending to contradict them,) the prisoner was, five years ago, a distracted woman. The same witnesses have testified that the prisoner was deranged last spring, at Roxbury.

Hannah Peake, one of the witnesses for the government, has testified that in June last the prisoner appeared to be unhappy about the conveyance of the property to Ephraim, and went away and removed some of her furniture to Mr. Bannister's. The prisoner, in a conversation with her husband, said they conducted so she should be crazy, and was crazy, and took hold of the table cloth and shook it and nearly pulled the dishes off the table.— Witness says she flew round the house like wild fire, and it took two or three persons to hold her—it was with great difficulty they could get her to bed. This, gentlemen, looks very much, to me, like a fit of delirium. Her reason had lost its dominion over her, and she was not at that time accountable for her actions. The learned attorney for the government, however, asks you to be uncharitable enough to say that it was all feigned.

Some seven or eight of the prisoner's neighbors have been called by the government and have testified that they never saw her when they thought she was insane. Does this prove, gentlemen, that she was not insane? These witnesses only saw her occasionally, and knew little or nothing of her state of mind. Hatfield's friends and acquaintances saw nothing like insanity in his conversation or deportment when he was on his way to the Theatre to shoot at the King. Yet he was insane. Learned physicians

in many cases have pronounced their patients sane when they were quite insane. You have, gentlemen, heard enough read from the books upon insanity to satisfy you that no reliance should be placed upon this kind of testimony. You have seen that when there is a constitutional tendency to insanity, the disease frequently attacks suddenly, and its first manifestation is some act of violence upon the patient himself or upon his friends. Dr. Prichard mentions a lady who was liable to sudden attacks of delirium, which, after continuing for various periods, went off as suddenly, leaving her at once perfectly rational.—The attack was often so sudden that it commenced while she was engaged in interesting conversation; and on such occasions it happened, that on her recovery from the state of delirium, she instantly recurred to the conversation she had been engaged in at the time of the attack, though she had never referred to it during the continuance of the affection. You see then, gentlemen, that a person in full possession of his reason may be bereft of it in a moment. One minute he may be accountable for his actions, the next not. Man is "fearfully and wonderfully made," and who can say how long his reason will hold dominion over him? If trifling occurrences may derange the machinery of his mind, and all is disorder and confusion?

You have been called upon, gentlemen, by the counsel on the other side, to judge the prisoner in all the uncharitableness of the human heart, to put the worst construction upon her conduct, and to draw the most unfavorable conclusions you can from the evidence. But such a course you never will pursue, because it would be unworthy the character of christian men. I ask you to judge the prisoner in the exercise of that charity which we all stand in need of when courts and jurors are canvassing our conduct and our motives, and I fear not the result.

Gentlemen, a few words more and I have done. The counsel for the prisoner have laboured under many embarrassments in making her defence. What little preparation we made in the case before the trial commenced

we were compelled to make without any assistance from her, because she was unable to afford us any. She has not capacity and understanding sufficient to give any rational account of the transaction, or to refer to any testimony which would be of importance on her trial. Indeed; she is one of the most helpless, forsaken, friendless females I ever beheld. She sits before you apparently totally indifferent as to her fate, and it is a melancholy fact that at this moment she has not capacity sufficient to understand the consequences which must follow her conviction. She presents to your view the human body, but without the human intellect. What little mind she had, when in health, has been "laid prostrate by a stroke of frenzy." She was brought to the bar from her cell, where she has been confined for the last four months, without any friend to cheer her drooping spirits, or to whisper in her ear one word of consolation.

Gentlemen, you have patiently listened to the prisoner's defence, and I ask you, in the spirit of candour, if we have not thrown the soundness of her mind into doubt? Are you prepared upon the testimony in the case to seal up her accounts for the judgment day? Can you deliver her over to the executioner, to suffer death on the gallows, without leaving a pang behind? If not, you should acquit her.

The scene that must follow a conviction will be too much for eye to witness or heart endure. When you see the prisoner on the fatal drop, with her grave open before her, and hear her frantic shrieks sound in your ears, the reflection that you might have saved her may harrow up your souls. Do not, I conjure you, gentlemen, take the fatal step while a lingering doubt remains on your minds. Put upon the prisoner's conduct the most charitable construction you can. Lean on the side of mercy for it is an heavenly attribute, and adds lustre to earthly justice. It is a prominent feature in that religion which your Saviour taught and which you all hope will secure your rest in heaven. Remember, O remember, "with what judgment ye judge, ye shall be judged; and

with what measure ~~ye~~ mete, it shall be measured to you again."

Gentlemen, I have done—I leave the prisoner in your hands—and my prayer to God is that he will preside over your deliberations and direct you to a correct conclusion in the case.

MR. HEBARD closed, on the part of the government, in substance as follows :

Gentlemen of the Jury.—It is with peculiar feelings of embarrassment that I enter upon the argument of this case. This trial has been one of continued and severe labor, to which add an entire want of opportunity for preparation and the great importance of the question in issue, and well might older and abler counsel than myself feel the propriety of relying upon other than human aid and direction in the discharge of so responsible a duty. But I am sensible of one other fact,—that no preparation of mine could avail with you. It is the force of truth that must cut its way to your understanding and carve out your verdict, rather than the soul-stirring eloquence of the gentlemen who have so ably conducted the defence. The duty of deciding upon the life or death of a fellow being, which this trial imposes upon you, does not often fall to the lot of juries in Vermont; and perhaps there is not a better evidence of the happy condition of our state, of our common country, and of the blessings of the laws and institutions under which we live, than this fact, that trials of this kind do not often occur. The great responsibility, gentlemen, which rests upon you, has been well pointed out by the counsel for the prisoner, and I would add, that never before in your lives have you, and I hope and trust that you never will again, be called upon to discharge so great a responsibility. But your responsibility is even broader than the counsel would have it. It is not only that the life of the prisoner hangs upon your breath—it is not with the life or the death of this prisoner, that the effect and influence of your verdict will cease to be felt. Your verdict is to become the property of the

public, and its effects may be realized, by generations yet to come, "for weal or for woe," through all future time. You have but to cast about you and witness this crowded house and these thronged galleries, and you will be satisfied that the verdict which you are to give in this case is not regarded as any very trifling matter.

The prisoner stands charged before you with the crime of wilful murder—a crime that is regarded by the laws of God and man with special disapprobation. You are called upon to decide upon the guilt or the innocence of the prisoner, who is charged with having taken the life of a human being, and sent the soul of her victim to the bar of his God. She is charged with having committed a crime at the bare mention of which our best feelings shudder, and which sends our blood in chilling eddies back to the citadel of life. She is charged with having accomplished her end, through the confidence of her victim, in his domestic retreat. But I beg of you not to let the aggravated nature of the transaction operate upon your minds as an inducement to the finding of a verdict against the prisoner, unless you have the clearest and most indubitable evidence on which to found that verdict. The law has humanely provided that, so long as a reasonable *doubt* of guilt remains, the prisoner is entitled to the full benefit of that doubt. If you do not find yourselves convinced beyond all reasonable doubts, that Ephraim Peake came to his death in the manner described in the indictment, by the premeditated act of the prisoner, it will be your duty to acquit her. She has been ably defended. Every thing that labored preparation, and learned and eloquent counsel could do, has been done; and if no reasonable doubt of the guilt of the prisoner has been raised in your minds, you may at least feel relieved from one anxiety: you may feel assured that no doubt can be raised.

Every point in the defence has been urged which ingenuity can suggest, and one has been resorted to which could not well have been anticipated. You are emphatically called upon to acquit the prisoner of the crime al-

leged against her, on the ground that capital punishments are impolitic and unauthorized.

"What rogue e'er felt the halter draw,
With good opinion of the law?"

With the punishment of the prisoner, gentlemen of the jury, you have nothing to do. Your only question is, Is she guilty of the crime charged? & if guilty, whether the punishment of that crime be death or imprisonment, your verdict must still be the same. The law has fixed the penalty, and if improperly, the consequences must fall on other heads; with that, you have nothing to do.

But, gentlemen, before you can be called upon to convict the prisoner, it will be the duty of the government to satisfy you, by the evidence in the case, of two things: First, that Ephraim Peake came to his death by poison, as described in the indictment; and Secondly, that the poison was administered to him by the prisoner, of her malice aforethought.

That Ephraim Peake died on the 20th day of August last, there is no dispute. That he came to his death by poison, there would seem to be almost as little doubt; but as the counsel for the prisoner have made this a point in their argument, and urged this consideration upon your minds, it is not for me to judge with what success. The two points and propositions here made, although distinct and separate, in themselves considered, are nevertheless dependent upon the same facts. If the deceased came to his death by poison, it is beyond all controversy that the prisoner administered it. It is proved that the prisoner bought an ounce of arsenic, about the first of July. It is proved that the object for which she pretended to want it was a feigned one; and it is proved, by the confessions of the prisoner, that she put the arsenic in the hash, on the day alleged in the indictment, and on the day on which the deceased was taken sick. It is also in proof to you that the commencement, continuation and termination of his sickness was such, precisely, as medical men and medical authors say are attendant upon sickness and death occasioned by the taking of arsenic. You have also a

cloud of witnesses, who give you in detail the various and multiform confessions of the prisoner, voluntarily and deliberately made, in which her agency and her criminality are distinctly admitted. You have also in evidence the declarations of the dying man, made in view of his approaching death, and the testimony of the living sister, who comes before you almost in the very coils of death, thrown around her by this same prisoner, and for the same fiendish purpose, whose testimony seems almost like an echo from the tomb, and bearing in her very looks evidence of the too fatal purposes of her destroyer. You have also evidence of the *post mortem* examination of the deceased, which fully corroborates the previous symptoms and leaves no possible doubt of the cause of his death.— You have also evidence of the state of feeling of the prisoner towards the deceased for several months previous to his death, which finds a perfect parallel in the first foul murdering of a brother that disgraced a fallen world.— You have all this testimony before you, with nothing to disprove or vary any part of it, and still as reasonable and rational men you are called upon to say, upon your oaths, that you have reasonable doubts of the prisoner's guilt. You are even called upon to believe that some unhallowed purpose has seared the consciences of the witnesses, and wrought them up to the perpetration of an act, by their oaths, as certain and as fatal in its consequences as that which the prisoner effected by poison. You are called upon to believe that the witnesses have conspired together to swear away the life of the prisoner. But this is asking of you too much. You will be very slow in arriving at a verdict that can only be reached by prostrating the character of honest and intelligent witnesses, and treading upon the ruins that yourselves have made.— There is one witness that receives more than an ordinary share of animadversion. It is said that she had the interest of the state too much at heart. It is said that the testimony of Lueretia Murch is inconsistent with the character of an honest and impartial witness: that the part she acted at the house of the deceased, at the time of his

death, and her testimony in court, savors too much of the character of an accuser and informer. Could you imagine yourselves, gentlemen of the jury, carried back to the scene which the witness describes, and there, on that occasion, see one member of the family "sleeping the sleep of death"—the head of that family shorn of his strength, and the sister of the deceased, another member of the family, apparently writhing in the agonies of death and impatiently awaiting the summons that was to call her away from her sufferings—and then turn your attention to the prisoner, then regarded as the cause of all this calamity,—the one, from the position which she occupied in the family, who ought to have been the soother of all their sorrows, converted into the poison tree, that scatters its leaves of death on all that come near it—and you can form some faint idea of the feelings that swelled the bosom of that witness, in common with the rest, and find an apology, if any is wanting, for the assiduity with which she watched the movements and the bearings of the prisoner.

But again, you are cautioned against the danger of finding a verdict upon the confessions of a prisoner. In this, and every other caution, I would most cheerfully join the learned counsel; and in whatever shape, or from whatever source the deception may come, I would caution you against the danger of being imposed upon by those arguments whose only merit consists in their ingenuity. I would caution you against all deceptions and all false conclusions. The law has hitherto regarded the confessions of a party, voluntarily and understandingly made, against his interest, as being the safest and most satisfactory kind of evidence. But you are cited to cases in which confessions of guilt have been made, which confessions afterwards proved to be false. The celebrated case of the Bournes is cited and held up to your view to warn you against all confessions. Of this case, gentlemen, let me say, that so far from being an authority to that point, it has for a long time been regarded by the intelligent part of community as a mere *ignis fatuus* that flits over the low

lands of courts of justice, and that it sometimes, designedly, is seized upon to lead the honest inquirer after truth into the fens and quagmires of doubt and distrust. In the first place, it is understood that the Bourne were not convicted upon confessions which they ever made. In the next place, the confessions which they actually made were made for the purpose of saving themselves from the gallows, rather than to bring them to it. Another case is cited from a note in the second volume of Starkie's Law of Evidence, in which it is said that the prisoner confessed the murder of a man who was afterwards found to be alive. What circumstance was connected with this confession, what inducement led to it, does not appear. But if these confessions in the cases cited were false, they differ from the confessions in this case in one very important particular. In this case the *corpus delicti*, as the law terms it, the body of the crime, is proved: in the others it was not. About the fact of the death of Ephraim Peake there is no chance to be mistaken; the only inquiry is, by what means he came to his death. Nor is this part alone dependent upon the confessions of the prisoner. You have a body of testimony founded upon facts, independent of the confessions of the prisoner, almost sufficient to warrant a conviction; and her confessions are all consistent with those facts, and fully corroborate them. You then have no need of the caution which might have been useful in the other cases. The facts that are proved corroborate her confessions, and her confessions corroborate those facts, so that it would seem that there is little for you to do but to satisfy yourselves whether the witnesses are entitled to belief.

But the counsel for the prisoner have not permitted your inquiries to stop here. They have offered you a crucible, in which by some chemical transformation, you are called upon to convert the acts of the prisoner, from crime into misfortune. You are called upon to find an apology for the acts of the prisoner, in taking the life of the deceased, in her insanity. This probably is the only defence, upon which, really, any reliance has been pla-

ced. The plea of insanity, is the ark of safety, into which criminals flee for protection, when pursued for their crimes. It is a plea that is easily made. And it sometimes requires but little capital to sustain it, save the frailty of poor human nature in its lost estate, unless a proper diserimination is made between that which is evidence of insanity, and that which is evidence of depravity. Not only is it attempted to be proved that the prisoner is insane, from her own actions and appearances, but it is attempted to be proved to you that insanity has been an "heir loom" in the family of her ancestors, and has been handed down from generation to generation, till it has become the property of the prisoner by inheritance. Whatever evidence there is in the case of any insanity, proves it to be of a very peculiar kind. There is testimony put in the the case to prove that the prisoner's father was insane. But it proves him to be the most rational man, for a maniac, that you ever saw. He is represented as discovering his insanity by his frequent attempts to commit suicide. But he is always possessed of too much presence of mind to take so important a step, without some person present to be a witness. Or if for a time he was so inconsiderate, as to determine upon so great an event without some friendly hand to check him, returning reason always came in to the rescue, and he was sure to do himself no harm. In short, his insanity, like that of the prisoner, was of that peculiar kind, which left him free to choose the time and the occasion to act it out,—it was a thing of convenience, and not of necessity. And no less remarkable is the insanity of the prisoner. Her insanity is completely subject to her will, and condescends to become her servant, instead of her master. And all the evidence you have of its existence, makes it a mere character, that she can assume and put off at her pleasure. There is another peculiarity attending her insanity, which makes it differ from any other.—She is always the first to discover it. Is it not a little remarkable, if the prisoner has been subjeet to fits of mental derangement, that some of her neighbors who have

been acquainted with her for ten, fifteen, twenty, and even twenty-five years, should never have discovered it? Is it not very remarkable that some of the members of her own family, during this period should never have been apprised of it? And is it not still more remarkable, that she could not be crazy without going to Northfield, or to Roxbury, or to the state of New Hampshire? But it seems there was one occasion on which she essayed to act the character of a crazy person at home in her own family. It was on the evening, after coming from Mr. Burnham's, where she had indulged herself so freely in her threats towards the deceased. It was, when finding that, by her threats of revenge, she could not deter her husband from his determination as to the disposition of his property, that she concluded to try what she could effect by threatening to be crazy,—and to convince the family that she was in earnest, she finally concluded that she was crazy, and so declared herself to be; and with how good a grace she acquitted herself in her assumed character, the witness has told you. But as there is no pretence that any witness has discovered any peculiar marks of insanity in the prisoner on or about the 12th of last August, it may be well enough to examine her acts, and see if they give any evidence of mental alienation, save that which has its origin in the depravity of the human heart, and identifies itself with crime. The prisoner bought the arsenic on or about the first of last July.—She feigned an excuse for buying it. She kept it till the 12th of August before she used it. She kept it without any member of the family knowing or suspecting that she had any. She waited till she had an opportunity of effecting her purpose, without endangering the life of her own son, to whom she bore no malice. She was careful to eat none of the poison herself; and when her fell purpose did not seem to be effected by her first attempt, with the same deliberation and perseverance, with which she had hitherto acted, and while her victims were struggling to recover from the effects of the poison, which was then consuming them, she continued to mix the drug of death

with every cordial, which they, unsuspecting, received from her hand, and she their only ministering angel in this time of need. Does this, gentlemen of the Jury, look like insanity? Does this look like the wild vagaries of a maniac? If this is madness, it is that "madness in which there is great method." It is that madness which rushes on to crime, and has its origin in the will and temper of its votary. But they have not only introduced witnesses to swear that the prisoner is insane, but they have read books to you on the subject, to establish that by theory which they have failed to do by proof. They have read page after page of copious extracts to you from a set of moon struck authors, who have not common sense enough of their own, to judge of the common sense of others in a common sense way; who have no conception of the power to "measure mind by mind," only through the medium of the fingers on the outward surface of the head. To such a source I trust you will never look for aid.—From such a source I am sure you will never derive it. These authors give just light enough to show the gloom and darkness with which they are surrounded. They are those corruseations of light that slit over bog and fen, where the footsteps of man must never come. Books of any kind can give but little aid in settling this question. It is a question that must be determined upon the evidence and the circumstances in the case.

But there are other considerations urged upon you, to convince you of the prisoner's insanity, and urged too, with a zeal worthy of a less hopeless cause. It is said that the very acts of the prisoner are evidence of her insanity. It is said that the attention and kind assiduity, with which the prisoner watched over the deceased, are inconsistent with her sanity, if she had intended his death. It is said that the protection which she gave him during the first week of that fatal malady which terminated his life, is conclusive evidence, either that she did not put the poison in the hash, or that it was put in with a freuzied hand. To this circumstance I have already alluded, and sought out a cause for her attention and devotion to the

deceased during that fatal week. 'Tis true, she lent him her protection, but it was "such protection as vultures give to lambs,—covering and devouring them." It was such kindness as the assassin shows his victim, when he sends a second poniard to his soul, and makes his steel "shed fast atonement for its first delay." The perseverance which she exhibited was in perfect keeping with her first design. Six weeks reflection, after she procured the poison, only served to strengthen her resolution in the prosecution of her purpose, and her bad success at first only served to urge her on to acts of deeper desperation.

Again it is said, that woman, "while reason holds her throne," is incapable of doing so foul a deed; that the soft and winning graces of the female sex hold no companionship with crime. It is said that the deep, strong, endless, never dying principle of love, that rests and dwells in the female heart, worships only at the shrine of purity itself, and guards its fleshy temple from the obtrusion of every unhallowed thought or deed.

I give my learned friend great credit for the charity and purity of his sentiments, so beautifully expressed.—They alike do honor to his head and heart. But, gentlemen, you must be aware, that this apostrophe, to the honor of the female sex, so beautifully, and so eloquently made, was intended for that part of the audience,

*"Whose bright eyes,
Rain influence and adjudge the prize,"*

rather than for the purpose of enabling you the better to arrive at the truth. It does not happen to be any part of your duty to settle the respective claims of the male or the female sex, to exemption from crime. The question is, has this prisoner committed the crime with which she is charged? If she has, although it were the first that woman ever stooped to, still it would be no less a crime, less did I say? infinitely more; as much more a crime, as nature has been more lavish of her gifts of innocence, and removed far away every incentive and temptation to commit crime. Much greater, and more aggravated is this crime, than it would be, had it not come from a hand

formed by nature for the bestowment of kind offices, and whose social relation had crowned the whole with the endearing name of *Mother*: But I am not disposed to dwell upon the aggravated nature of this foul deed. I am not disposed to call to mind the circumstances of this tragical scene, to harrow up the feelings of the prisoner, or increase the horror of her reflections, any further than shall seem to bring her to repentance. The circumstances of this heart-rending tragedy, are peculiarly aggravated. If they were detailed with that eloquence, with which every mitigating circumstance in the life of the prisoner, connected with this transaction, has been presented to you, as Mark Anthony would say,

—“ ‘twould move
The stones of Rome to rise and mutiny.”

But I must forbear. The great length of this trial admonishes me, that you, as well as all the rest of us must be greatly fatigued. The patience which you have exercised, is worthy of all praise. But the great importance of this trial is all the apology that you will require for having been detained so long. With you is the prisoner, in your keeping is her destiny, and in your hands are the keys of Justice; and in giving your verdict, may you be guided by that wisdom which is able to lead you into all truth.

The argument in the case having been concluded, Chief Justice WILLIAMS charged the Jury as follows:

Gentlemen of the Jury,—The prisoner at the bar, Rebecca Peake, has been indicted by the Grand Jury for this county, for the crime of Murder. The indictment in substance, charges, that on the 12th of August last, she prepared and mixed arsenic with some hash, and caused it to be administered to Ephraim Peake; and also mixed arsenic with certain drinks which she prepared for him, and caused the same to be administered to him, whereby he became sick and died on the 20th of August, and that so, of malice prepense, she killed and murdered

him the said Ephraim. Murder has been correctly defined to you. It is the voluntary killing any person in the peace of the state, of malice aforethought. As it must be a voluntary killing, in order to constitute the crime, the person killing must be in a situation that he might have exercised his reason and will, or in other words, if he is deprived of his reason by insanity or madness, he is not considered as guilty of the crime. By the term malice, it is usually meant, that the act has been attended with those circumstances which indicate a wicked, depraved, and malignant disposition. In the language of the writers upon this subject, the circumstances must carry in them plain indications of an heart, regardless of social duty, and fatally bent upon mischief. This malice is frequently presumed. The rule of law is this, that in every charge of murder, the fact of killing being proved, all the circumstances, of accident, necessity or infirmity, must be satisfactorily proved, by the person charged, unless they arise out of the evidence produced against him. The law presumes the act to be founded in malice, unless the contrary is made to appear. There is another presumption of law, applicable to this case. Every one is presumed to be innocent of a crime, until full proof is made against him. This presumption of innocence is an invaluable rule, in the administration of criminal jurisprudence, and must never be lost sight of. It must be encountered and overcome by full proof of guilt, before any one ought to be convicted. You, gentlemen, are judges, both of law and fact, in this and in all criminal cases. The court are bound to lay down every principle of law which arises and becomes material in the trial,—and if they state them incorrectly, a new trial may be awarded, at the instance of the prisoner, but nevertheless, you may decide the law, and if you return a general verdict, particularly if it is a verdict of acquittal, your decision cannot be corrected, although you may have mistaken the law. Before you return a verdict of guilty, you must be convinced, beyond any reasonable doubt, of every fact which it becomes necessary to prove to establish the guilt of the prisoner. By

this, it is not to be understood, as has been urged, that there is to be no possible doubt, for it is not in the power of human testimony to place any case beyond all doubts which may be conjectured. The witnesses may have been mistaken ; they may have sworn falsely. In cases similar to the one under consideration, if the proof was ample, that arsenic was administered—that it produced the usual symptoms—death ensued—and the metal actually found in the stomach, there is yet a bare possibility that the death might be the effect of some sudden disease, and yet no one would act on that belief. If the evidence of a particular fact is such that no rational man would doubt the fact, or hesitate to act on the belief that the fact is true, then it may be said to be proved, beyond any reasonable doubt. If you are convinced in this case, beyond a reasonable doubt, that the prisoner is guilty, it will be your duty to say so, and you are in no way responsible for the consequences.

The argument, which has been addressed to you, in relation to the right to inflict capital punishment in any case, should not enter into your considerations. As this was a case of great moment to the prisoner, and in which her counsel have made a most eloquent address to you, we did not think proper to interrupt them in this part of their eloquent appeal. But gentlemen, you will undoubtedly see how improper it would be, for you to be governed by any considerations of this kind. You were enquired of, before you were empanelled, whether you had any conscientious scruples, which would prevent your returning a verdict of guilty, if the evidence was satisfactory, where the punishment was death, and your answer was in the negative. And indeed, we are not in any way responsible for the punishment which may ensue upon conviction, we are only responsible, that we do our duty, with integrity and uprightness. You may regard the consequences so far as to make you cautious in your investigations, and endeavour by all the means in your power, from the evidence before you, to come to a correct conclusion, but no farther.

In this case it is in evidence, and not controverted, that Ephraim Peake died on the 20th day of August last, and therein it wholly differs from the cases which have been read to you, where convictions of murder have been had, and the persons supposed to be murdered, have afterward been proved to have been alive, at the time. The question then arises, did he die of poison received into his stomach, and was the prisoner a voluntary agent, in procuring, preparing, and administering the poison?— Both of these questions are blended in some measure by the testimony. The symptoms and appearances of the deceased, and the facts, which are relied on, as proving that poison was procured and administered, are testified to, by the same witnesses. There is nothing appearing, which should lead to the belief, that all the evidence on these points is not produced, or that the best evidence, which the nature of the case admits, has not been brought forward. The first evidence to shew that the deceased came to his death by poison, is the symptoms which attended him, as well as those which attended his father, and his sister, to both of whom it is alleged the same poison was given. To this point, you have the testimony of Doctor Pember, Doctor Carpenter, and Miss Fanny Peake, who partook of the same, and is now deprived entirely of the use of her limbs, in consequence, as she supposes, and as the physicians suppose, of taking it,— Sarah Perkin and Deborah Beebe. [The Judge here briefly stated the testimony of these witnesses.] Secondly. The appearances which were discovered on the *post mortem* examination, are also relied on, as evidence that the death was the effect of poison. The contents of the stomach were not submitted to an analysis, the physicians supposing that none of the arsenic or poison would be found, after the lapse of so many days, since they supposed it was taken, and the continued evacuations of the deceased. These appearances are testified to, by Doctors Pember and Carpenter. Thirdly, the opinions of the physicians attending. The two gentlemen, Doctors Pember and Carpenter, who attended the

deceased, and the family were of opinion, when first called, that they had taken something in the stomach, which caused their sickness. They were of opinion, both from the symptoms and the appearances, on the *post mortem* examination, that the death was caused by a mineral poison. The other gentlemen of the faculty, who heard the symptoms described, as well as the appearances, Doctors Winslow, Smith, Pixley, and Denison tell you, that they should not expect the aggregate of these symptoms, in their connexions and degrees, from any other disease. This evidence, if it is not satisfactory to convince you of the fact that the deceased died in consequence of poison, must be taken in connection with another fact, which it is attempted to be proved on the part of the prosecution, to wit: that arsenic, was in fact administered to the deceased. Doctor Dennison tells you, that if he knew that the deceased took arsenic, he should have no doubt, from the symptoms, and appearances described, that his death proceeded from that cause. You will then proceed to the enquiry, whether there is sufficient evidence, to convince you that arsenic was actually given to the deceased. The evidence to this point, is also intimately connected with the evidence, relied on, to prove that the prisoner was instrumental, both in procuring and administering it. This evidence consists of several circumstances, which have been testified to by the witnesses on the part of the prosecution, independent of any confessions or declarations of the prisoner, as well of those confessions and declarations.— That arsenic was procured by the prisoner, about the last day of June or first days of July, is testified by Carlos C. Stone, who says, that at the store in Royalton, where he was a clerk, the prisoner purchased an ounce of arsenic, declaring that Doctor Tower, of Roxbury, had sent by her to get it. Mr. Tower who is a brother in law of the prisoner, and who is the only one of that name residing in Roxbury, testifies that he never sent by her, for any arsenic, and never received any from her. It is also in evidence, that the prisoner did not eat of the hash, which

caused sickness in the other members of the family.—Miss Fanny Peake testified, that the prisoner gave her salt and water, and the effects of it, and also as to the custards, and the effects which followed. The circumstances of the prisoner dropping her head and retiring to her room, when the physician was enquired of whether the sickness was not the effect of poison, as testified by Sarah Perrin. The directions which she gave twice to empty a cup which had some drink in it, prepared for the deceased, as testified by Sarah Perrin and Deborah Beebe. The circumstance of her unwillingness to go down stairs, saying she was unable to go down without help, and in returning stepping up without any difficulty, as testified by Edward Eastman and Jesse Robinson, is also relied on, although it is rather a slight circumstance. You have also in evidence the declarations of the deceased, made while he was under the belief that he should not recover, both as to the taking the hash and the effects of it, the taking drinks from the prisoner and the effects of them, and her preparing the drink in the tea cup, urging him to take it, telling him it would make him sick, and his declining. These declarations at different times during his last sickness, and while he was sensible that he must die, are testified to by Sarah Perrin, Fanny Peake, Daniel Perrin, Deborah Beebe and Peletiah Rogers. This cup contained the drink which the prisoner directed to be emptied. The contents of it was put into a vial and carried to Hanover to be analyzed, but was lost where Doctor Pember, who carried the same, was thrown from his wagon and the vial broke. [The Judge here recapitulated the testimony of these witnesses.] These are the facts which are given in evidence, independent of any confessions or declarations of the prisoner. On the part of the prosecution, several witnesses have been called to state the confessions or declarations of the prisoner. The declarations, as well as the conduct of a person charged with a crime, are commonly received in evidence, and the fact of their making contradictory statements, when there was no motive for so doing, are frequently relied

on as evidence of guilt. Confessions of a person charged or accused of a crime are also frequently received in evidence, and when they are voluntarily made, where they appear to have been from a sense of guilt and from a desire to rid the mind of the burthen of concealed guilt, and we are sure we learn the precise terms in which the confession was made, they are highly satisfactory. The law has however protected persons from being made, unwillingly, the instrumehts of their own conviction. Any threats or promises, however slight, to obtain a confession, are sufficient to exclude it from being given in evidence. Whenever a crime of magnitude is committed, there is always a great desire to ascertain all the facts connected with it: and for that purpose a variety of means are usually resorted to, to learn from the person accused all the facts of the case. This is not only natural, but it is highly laudable. It however frequently happens, that in order to learn these facts, inducements are held out, or threats made, which prevent the confession from being given in evidence. Centuries have not passed away, since it was common to make use of the rack, or torture, to induce a confession, and on that confession to excuse the person confessing. At present, however, no confession can be received in evidence, unless it is purely voluntary. All the witnesses who have testified to these confessions of the prisoner have declared that no means were made use of to induce her to make any declarations, except by interrogation, when she was disposed to reply. These declarations of the prisoner you have in the testimony of Sarah Perrin, Lucretia Mirch, Deborah Beebe, Edward Eastman, Susan Turner, Jesse Robinson, Rev. A. C. Washburn, Alexander Young and Calvin Blodget. The statements of the prisoner were not always the same. To Mrs. Mirch and Judge Blodget she declared that after she procured the arsenic at Royalton she put it into her trunk, where it remained until she put it into the cup, and sprinkled it on the hash. To all the others, she declared that she gave it, at Royalton, to the girl, who requested her to procure it, who

put it into her basket, and she did not know what had become of it ; but to all she declared, that at the time it was put into the hash that she took it from the cup, and stated how much there was in the cup. To Mrs. Mirch and Judge Blodget, she also declared, that she put it into the hash in the morning, to all others that it was at noon. [The Judge here adverted to several parts of the testimony of these witnesses, as to the confessions.] On the part of the prosecution, they have also given testimony as to the threats of the prisoner, and to shew what was her motive. There can be no motive for any one to commit a crime, but if there was nothing which could be supposed to influence a person to do the act, which constitutes the crime, there might be some doubt whether there was ~~not~~ some mistake in the evidence. Testimony has been given to shew that the prisoner was much dissatisfied with the manner in which her husband had disposed of his property, & his giving a deed to the deceased ; her unwillingness to have the deceased come to live with, and take care of the family ; and her threats against the deceased on this account. You have this in the testimony of Lueretia Mirch, Solomon Burnham, Hannah Peake, and Jesse Robinson. [The evidence on this head was here mentioned.] This is the testimony on the part of the prosecution. If from this you are convinced that the deceased died in consequence of taking arsenic, and that the arsenic was administered by the prisoner, you will then enquire, as to the defence set up in her behalf, viz. insanity. If it is proved that the prisoner was insane, and was unconscious of the act at the time she did it, she is not only not guilty, but is deserving of compassion. This is a defence easily made. Insanity is easily pretended, or feigned. It must, therefore, be satisfactorily proved to excuse what would otherwise be a crime. In order to render this defence available, it must be made to appear that there is a radical defect in the intellect, so that the person is bereft of reason, has not the control of his will, and is unconscious of the criminal intention. It is not eccentricity, ungovernable

passion, or intoxication, which constitutes insanity. The case of Lord Ferren, which was read to you from some of the medical authors, was one where there was evidence of insanity, considered by some as very strong. It did not however avail him. The court who tried him were satisfied that his conduct proceeded from ungovernable passion, and pronounced him guilty. He himself declared afterwards, that the defence was made to satisfy his friends, but against his wishes, and there remains no doubt that he was rightly convicted. The party laboring under insanity, is usually unconscious of any crime, and generally has no hesitation in avowing the action, is usually labouring under a delusion, supposing facts to exist which have no existence, except in his imagination.—Lord Erskine, in his argument on the trial of Hatfield, considered that it must appear, in every case to make out insanity, that the person was under a morbid delusion as to the existence of facts, and acted on the supposition that these facts existed. Before a jury excuse any one, on this account who had done those acts which would otherwise be criminal, they must be convinced, that he was actually insane, and unconscious of the crime, at the time the act was done, that it proceeded from the effects of the disease, or was intimately connected with it. The opinions of the medical authors, which have been read, are entitled to consideration, as well as the opinions of the medical gentlemen who have testified; but you must learn from the testimony whether this case is brought within any of the class of cases treated of by those authors. The difficulty of giving any precise definition of insanity, or of pointing out any cause which will certainly produce it, you must have learned.

It is urged in this case, that the very atrocity of the act is to be considered as evidence of her insanity; but it will not do to act on this belief. All crimes, and all instances of cruelty or brutality, have been considered by some as a species of insanity. It is certain that the persons committing them do not reason correctly, and are under the dominion of any thing rather than reason.

But in a court of justice, it will not answer to treat the very atrocity of a crime as an excuse for it. The dominion of passion, may for a time, overcome the power of reason: but we are under obligation to control our passions; and the stronger they are, the more vigorous must be our exertions to conquer them: and it cannot for a moment be considered, that because there is not and cannot be any adequate motive for the commission of a crime, that, therefore, no crime is committed.

On the subject of hereditary insanity, about which much has been read and said, I would remark, that the evidence was received on this point without any objection; but if it is proved, that the parents, and the sister, and the brother of the deceased, have been insane, it does not necessarily follow that she is. Her sisters who have testified to this fact, it is not pretended are, or ever have been, in that condition. The only effect of this fact, if proved, would be, that a jury would be more likely to believe, that the child was insane whose parents were so, and would the more easily attribute their conduct to that cause. To prove this insanity of the father and mother and sister, you have the testimony of Mary Blood, William Blood, Phebe Towers, Ephraim Towers, and Susan Bannister; and two of these witnesses, testify as to instances when they now attribute the conduct of the prisoner, in a former instance, to insanity. How far this testimony is satisfactory, to prove that any of these persons were insane, it is for you to say; and also whether there is any evidence that the prisoner was laboring under that infirmity. On this point, on the part of the government, you have the testimony of Doctor Pember, the physician who has usually attended her—the opinions of Doctors Winslow, Smith, Pixley and Denison on those facts which are relied on as evidence, as shewing a tendency or predisposition to insanity in her, and also the testimony of those persons who have been acquainted in the family, viz: Sylvanus Blodget, Alexander Young, Pelitia Rogers, Solomon Burnam, Sarah Perrin, Daniel Perrin and Samuel Britton. In connection with this, you

are to take into consideration the time during which she kept this arsenic, from first of July to August, the secrecy and deliberation she observed in administering it, her declarations of her consciousness that it was wrong, until she made up her mind to do it, and after that that she did not think much about it, as testified by Mrs. Mirch, her urging him to take the salt and water, declaring that it would make him sick, her directions to empty the cup, and her repeated conversations upon the subject, and then determine whether she was insane and unconscious of any crime. If you are convinced that the prisoner was insane, and under the influence of disease, did the act which caused the death of the deceased, (and if it was done during a period of insanity, and when she was under a morbid delusion, such must be the inference,) it will be your duty to acquit. There is also evidence, which the prisoner has introduced, to discredit some of the witnesses on the part of the government, viz : Levi W. Hibbard, as to the declarations of Jesse Robinson, and Samuel Hibbard, as to the declarations of Edward Eastman. Mr Robinson and Mr Eastman deny the statements made by these witnesses. It is for you to give it all the consideration which you think it entitled to, and if you believe the witnesses on the part of the prisoner, rather than those on the part of the prosecution, you will give it what weight you think it entitled to, in discrediting any part of the testimony. There is also the testimony of Jacob Perrin, introduced on the part of the prisoner. This was not mentioned in the argument, and I know not what was expected from it, unless it was to show that the deceased was not sensible of his danger until the day before his dissolution, and therefore did not make his declarations under the belief of his immediate danger. You will take this evidence into consideration, and give the prisoner every benefit of it to which she is entitled. There is also the testimony of John Pierson and Samuel Hibbard, that she was considered, in point of intellect, as rather inferior to others, and Mr Burnam and Mr Young, who think she was not so considered. If she

was capable of distinguishing between right and wrong, the law cannot measure her capacity,—and whether her mind was strong or weak, she must be answerable for her actions.

This is the evidence which has been introduced, in support of, and in defence against this prosecution. You are to determine from this evidence as to the guilt or innocence of the prisoner at the bar. The responsibility is on you. If from the evidence, you are convinced, beyond a reasonable doubt, that the deceased died of poison, administered to him by the prisoner at the bar, that at the time she was in the exercise of, and possessed of her reason, and did it from malice prepense, it will be your duty to pronounce her guilty;—but if you have any reasonable doubts on this subject, you will give the prisoner the benefit of those doubts, and render a verdict of acquittal.

The Jury retired and after an hour's deliberation brought in a verdict of GUILTY—when Judge Williams addressed the prisoner as follows :

REBECCA PEAKE,—The Grand Jury for this county have preferred against you a bill of indictment, charging you with the murder of Ephraim Peake. To the indictment you have plead not guilty. The jury after a calm, patient and full investigation, have found you guilty. The court are entirely satisfied with the verdict. Indeed, the jury could not from the evidence have come to a different conclusion. You thus stand convicted of the crime of wilful murder with premeditated malice. It remains for the court to perform the unpleasant and painful duty imposed on them, of pronouncing the sentence of the law, which must convey you to the gallows and send your spirit into the presence of your Almighty Judge, who knows every action of your life and every thought and intent of your heart. On this solemn and affecting occasion, it is neither necessary nor expedient that we should harass your feelings by an enumeration of all the circumstances which have transpired and been detailed in evidence which but too powerfully impresses the mind with the conviction of the enormity and the greatness and the peculiar malignity of your crime. We can have no other feel-

ings in your present situation, than emotions of the most painful regret and sorrow.

It appears that some years since, you married the father of the deceased, and on account of a dissatisfaction with the manner in which he made an arrangement of property, you conceived the desperate and detestable resolution of administering to him and his family a deadly and fatal poison, and you carried your resolution into effect so that you endangered the life of your husband, made his daughter a helpless cripple for life, and sent his son to an untimely grave. Instead of being the affectionate mother of his child as was your duty, you became his ruthless murderer. The law adjudges that such persons who evince so malignant a disposition and purpose, must not continue on the earth or be any longer the scourge and terror of their fellow beings. On this subject we have no discretion, we can neither increase or lessen the punishment awarded for the crime, but are compelled to pass the fatal sentence which will cut the thread of your existence here.

It is not for us to say that the prerogative of pardon ought not or cannot be extended to you. The sceptre of mercy is swayed by other hands. We can only say that there is nothing in your case calculated to raise any hopes that this prerogative will be exercised in your behalf or that you will not undergo the sentence of the law. We can only advise you not to place any reliance on a hope of pardon, but spend the remainder of the time allotted to you in this world in preparing for your departure. Let me entreat you then, as a fellow immortal, that by deep contrition and repentance, you endeavour to secure an interest in the Saviour of sinners and through his intercession and merits to obtain the pardon of your sins. Guilty and criminal as you are, you may yet find mercy at the throne of Grace; but let me assure you, that unless you exercise this repentance and contrition; unless you are deeply penetrated with a sense of your crime and your sins and become penitent therefor, "the throne of mercy will be inaccessible," and "the Saviour of the world," as to you, "will have been born in vain."

The sentence which the law awards and which the court pronounce, is, that you be taken from this bar to the prison from which you came, and there remain until Friday the twenty-sixth day of February next, and on that day at some place of execution, to be selected by the Sheriff, between the hours of ten o'clock in the forenoon and three in the afternoon, you be hanged by the neck until you are dead, and may Almighty God have mercy on your soul.

Died, in Chelsea jail, Feb. 8, of ulcers in the throat, Mrs. Rebecca Peake, the prisoner in the above case.

NOTE. Several of the prisoner's neighbors were introduced by the state who testified that they never saw the prisoner when they thought she was insane. In page 64, 23d line, omit the word "f." The first line of the 16th page should be inserted after the first line of the 15th page.

